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Volume 10

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

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PETITION FOR CERTIORARI FILED AUGUST 20, 1941.
CERTIORARI GRANTED MARCH 16, 1942.

INDEX TO VOLUME 10.

Pages 6761 to 7552.

TRANSCRIPT OF TESTIMONY.

WITNESSES FOR RESPONDENTS (CONTINUED).

Testimony of:

Coogan, F. M. 6794
Fellows, A. M. 7507
Magee, John F. 6773
Postelle, Charles P. 7421

(Testimony of Witnesses contained in pages 22843 to 25619 of the Original Transcript.)

22843 Washington, D. C.,
September 8, 1939.

22844 JOHN F. MAGEE thereupon resumed the stand and testified further as follows:

22845 The witness identified Resp. Ex. 417 as the Year Book referred to containing all the committees of the societies, the entire membership of the society with individual names and names of institutions, 4000 in number. It covers the charter, by-laws, and rules and regula-
22846 tions of the society. It gives the present personnel of the society and of all of the committees. The annual volume would show the personnel of the committee for each particular year. There is nothing in showing the membership of the Cement Committee in 1927 and
22847 1930. The specifications put in yesterday were not the last. The last revisions were in 1937 and 1938 and Resp. Ex. 417 shows the personnel of the committee when specifications, which are now in effect, were written.
22849 (RESP. EX. 417 was offered and received in evidence.)

Trial Examiner Norwood: All of those exhibits back to 402 are received for the purposes heretofore stated, as showing these standards that were observed, and as showing who made them, and so forth, which are set out in connection with receiving some of them.

(RESP. EXS. 404-A to P, 405-A to F, as received, 414 was offered and received in evidence.)

By Mr. Leisure:

22850 Q. Just by way of introduction to the subject, Mr. Magee, you told us yesterday that these specifications tended to become more strict with each revision. That applies, does it or does it not, down to the last date, 1939, which we have discussed?

A. Yes, sir.

Q. How do those specifications compare with the specifications of the Government on Government projects?

A. Well, as a general rule, they are identical for a certain period from the beginning of this specification, 1904, until 1912. I think there was no comparison at all. The Government was interested, took part in the development of this specification.

In 1912 there was—in 1912 the Bureau of Standards, for some reason or other, thought it advisable to set up a specification of its own, which deviated slightly from the A.S.T.M. specification.

The witness identified Resp. Ex. 418 as the ASTM specification he had just described, issued in 1913 by Executive Order of President Taft, effective 1912.

Mr. Leisure: I ask to have it marked for identification, please.

(The document referred to was thereupon marked for identification as Respondents' Exhibit 418.)

22851 (RESP. EX. 418 was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Magee, will you refer to page 6 of Respondents' Exhibit 418? I notice that there is a full page there of committee members. Will you tell us whether any of those are representatives of any cement company, or are they all governmental men on that committee?

A. There are no cement men, no cement manufacturers at all. And they all seem to be connected with governmental bureaus, such as the Bureau of Standards, Public Buildings and Grounds, Quartermaster, Bureau of Mines.

Q. You need not read it.

Was the Government specifications of 1912, which you have been referring to,—were they subsequently changed, Mr. Magee?

A. Yes, sir. In 1916 or 1917 there was a change in the Government specifications following a joint conference between the Bureaeu of Standards and the A.S.T.M. and the Civil Engineering Society. It was a joint conference developed at that time, the result of which was a

22852 complete conformance of both the A.S.T.M. specification and the Government specification.

In the 1912 specification there was some deviation, some difference between the two, not of great importance. It was mostly a matter of test procedure. The important items, fineness, tensile strength, things of that kind, were the same from the beginning.

The witness identified Resp. Ex. 419 as the Bulletin of the Bureau of Standards issued on January 18, 1917 which he has been describing.

Voir Dire Examination by Mr. Wooden.

22853 These Bureau of Standards' circulars containing United States Government specifications for Portland cement are for use in the purchase of cement by the Government. There is a tendency for any Government specifications to be adopted by other consumers generally, as evidenced by the fact that at this particular time the standard committee of the ASTM and the Government drew up the identical specification. There is always a tendency for the manufacturer to make his product conform to Government specifications. The specifications were intended specifically to govern the purchase of cement by the Government.

(RESP. EX. 419 was offered and received in evidence.)

By Mr. Leisure:

Q. Now, referring again, Mr. Magee, to page 7 of this document, Respondents' Exhibit 419, which has now
22854 been received in evidence, consisting of 43 pages, which shows the personnel committee, are any of those gentlemen representatives of the cement manufacturers?

A. No, sir. This runs over to the next page, and my statement covers that page also.

Q. Now, you mentioned, in talking to Mr. Wooden, a joint conference. Are you familiar with the circumstances and with the result of that joint conference, Mr. Magee?

A. Yes, sir.

Q. I show you a circular of the Bureau of Standards purporting to be issued January 18, 1917, and ask you if that is the results of the meeting which you have just told us about.

A. This is the same bulletin as the previous one which, as I have said, is the Bureau of Standards' circular covering the results of the joint conference. It is the same as that one.

Q. Then, 419 does cover the results of the conference?

A. Yes, sir.

Q. And do I understand, Mr. Magee, that Exhibit 419 was adopted as a result of the joint conference?

A. Yes, sir. That was the Bureau of Standards' specification, which resulted as a result of the joint conference.

The witness identified Resp. Ex. 420 as a joint
22855 conference report issued by the Committee C-1 of the ASTM.

The names of the personnel of Committee C-1 do not appear in the volume (Resp. Ex. 420). Committee C-1 had nothing to do with that volume. That was the result of a joint conference composed of nine men, three appointed from the American Society for Testing Materials, three from the Civil Engineering Society, and three from the Bureau of Standards. I think the names of those
22856 nine men appear in that volume but Committee C-1 had nothing to do with that joint conference. Committee C-1 published the volume. It was adopted by C-1 after the joint conference made the specification. As a matter of fact, in all these proceedings when Committee C-1 adopts anything, it has to be referred to the entire membership of the ASTM. Any specification that is recommended by any committee is submitted by letter ballot to the full membership of the association, some 4,000 in number, covering all ranges of activities. The cement indusfry was not represented at the joint conference.

22856 (RESP. EX. 420 was offered and received in
22857 evidence.)

Subsequent to the circular the Bureau of Standards issued January 18, 1917, I think there was a revision by the Federal Government, about 1927 or 1928, which conformed to similar revisions made by the ASTM.

The witness identified Resp. Ex. 421 as the U. S. Bureau of Standards publication consisting of 18 pages and containing the revisions of 1927.

22858 (RESP. EX. 421 was offered and received in evidence.

There were two more revisions of these Government specifications of standard Portland cement, I think, and I think the next one was about October 14, 1930.

The witness identified Resp. Ex. 422 as the revision of Government specifications for standard Portland cement issued about October 14, 1930.

Voir Dire Examination by Mr. Wooden.

22860 The witness testified that Resp. Ex. 422 is identical as to requirements and procedure with the industry standard specification.

(RESP. EX. 422 was offered and received in evidence.)

The witness identified Resp. Ex. 423 as the 1936 revision of the specifications. This does not include the test procedure. There was no change in that. The two go together to make the full specification. This is the latest
22861 revision.
22863 (RESP. EX. 423 was offered and received in evidence.)

By Mr. Leisure:

Q. Was that anything else than a further description—

A. Further description; that expresses it better than when I said extending the specification.

Q. You mentioned, Mr. Maree, in reply to Mr. Wooden, the tensile strength. What did you mean as you used that in connection with cement?

22864 A. Tensile strength is the ability of cement or of concrete to withstand pull, would stand a pressure which tends to pull it apart. It is determined by molding a mixture of one part cement and three parts standard sand in a form of a briquette, which is a specimen with enlarged ends and a narrowed mid-section, which measures exactly one square inch.

That specimen, after being properly cured in the laboratory under prescribed methods, is placed on a machine which exerts pressure tending to pull it apart. It finally does fracture across the mid-section, very often splitting the pieces of the aggregate; that is, pieces of sand that is in it.

Trial Examiner Norwood: I don't think you need go into those details. Tensile strength is something that is very well understood.

The Witness: Very good.

By Mr. Leisure:

Q. Now, what is the requirement, then, following up Mr. Wooden's question,—what is the requirement of the A.S.T.M. with respect to tensile strength?

A. For a one-to-three mortar mixture the seven-day tensile strength requirement is 275 pounds per square inch. Twenty-eight day, 350 pounds per square inch, the number of days there representing the age of the specimen.

Q. Do your various mills meet that standard, Mr. Magee?

A. Yes, sir; we meet it and with some to spare.
22865 We have always allowed a margin of about 50 pounds per square inch to take care of the personal equation in laboratory procedure, so that we have always made our cement to test 50 pounds above standard specification, above Government specification.

Q. Is that the amount that you are exceeding it today, or is that—

A. No, we are exceeding it by a hundred pounds today because there is a sort of a quality competition with a tendency of one company to make cement a little higher than the other and brag about it, and we have gradually increased first—as I say, we always allowed a 50-pound margin. That means 50 pounds above 275, or 325.

Five or six years ago we raised that to 350, and several years ago we determined on a standard for our company of 375 pounds, which is a hundred pounds above the standard specification, and above the Government specification.

Q. Mr. Magee, when we adjourned you were just telling us to what extent you had endeavored to keep—in your company, to exceed the required specifications in your tests. Do you also make any tests of your competitors' products?

22866 A. Yes, sir; we buy their products on the open market,—we buy all cement that we can find on the open market and test them in our laboratory.

Q. Now, in making those tests, Mr. Magee, of your competitors' products, have you found any competitive plants that test below the A.S.T.M. standard?

A. No, sir. The lowest we have ever found was 300 pounds, which is 25 pounds above specifications.

Q. You say the lowest. What about in the other direction, the highest. Have you found higher than yours, at times?

A. Four hundred pounds is about the maximum.

Q. And do you meet those, when you find them?

A. No. As I said, we think 375 is plenty good enough. If a customer asked us to give them a special strength of 400 pounds we would probably do it, but we think 375 is plenty high enough. In fact, we wonder if when you go above that, whether you don't begin to go down grade on your general qualities.

Q. And do you mean down grade as to quality?

A. Yes, sir. I mean there is a considerable question as to whether these extremely fine cements and high lime cements are the best for durability, which is the real thing for which you want concrete. They make a more active cement, a cement that sets up more quickly, develops a higher early strength, but the strength curve tends to flatten.

22867 At 28 days—

Trial Examiner Norwood: I don't think you need to go into those particulars there.

By Mr. Leisure:

Q. In other words, it is the permanence that you are interested in?

A. Yes, sir.

Q. Have you ever run along at a lower level than you have described?

A. No, sir.

Q. In making these changes have you ever changed the standard by which you exceed the 275-pound requirement at any of your mills to meet any local competition situations?

A. Yes, sir. As I said, we always allowed a 50 pound margin. We have gotten to the point now where we allow a 100-pound margin, but that transition was gradual and sometimes came at one mill before it came to another because of quality competition.

Q. I neglected to ask you, Mr. Magee, when we were talking about the permanence, what the purpose was of any soundness tests that you did make.

A. The purpose of a soundness test is to develop any injurious effect that there might be due to an excess of lime, due to a free lime, which means an excess of lime, which is not thoroughly burned.

22868 Q. Then from what you have told us, does it make any difference today what brand the contractor uses in composing his aggregate?

A. No, sir; practically no difference. Some contractors develop preferences for one brand or another, sometimes basing those preferences on a supposed better workability, or something of the kind. Usually, however, the preferences are just some fancy that the builder has.

Q. Is this tensile strength affected by the mixing of the concrete when it is used as concrete?

A. Yes, sir. The tensile strength of cement is deter-

mined by a standard mixture of one part cement and three parts sand, but when the cement is actually used in concrete in varying proportions with sand and crushed stone or gravel the proportioning method, the mixing procedure, or the quality of the sand and stone, has a good bit to do with the strength of the concrete which is the resulting mixture, so that a good cement doesn't always insure a good concrete.

Q. Are those qualities that affect workability definite, would you say, or are they indefinite?

A. They are indefinite. The quality that affects workability may come from one thing or another, or may, as I have said, be just something in the mind of a contractor.

Perhaps the most important quality having to do with workability is that quality of bleeding. Some ce-
22869 ments will have the tendency of shrinking the water out as they set, the water carrying out from the cement some of the fine particles of cement which should be in the mass and make the concrete better. There is some difference in bleeding qualities of cement.

22873 Q. With reference to the subject that we have
22874 just been discussing, Mr. Magee, what is meant by moderate heat cement?

A. Well, a moderate heat cement is a development from a low heat cement, if I may approach it from that view.

Several years ago, a number of years ago, the Bureau of Reclamation developed a low heat cement for the Boulder Dam. Now, the reason for that is that in massive concrete work the setting of cement is accompanied by the generation of a heat of hydration, and on account of that heat the massive concrete expands, and then when it cools off it contracts, leaving cracks in the structure.

Trial Examiner Norwood: Now, you need not tell us the process of that. Can't you define moderate heat cement without telling us the entire process of its manufacture?

The Witness: I think I could, but I doubt if you will understand it.

Trial Examiner Norwood: Well, try.

Is moderate heat cement described in these pamphlets that are already in evidence?

Mr. Leisure: Not in those that we have put in evidence so far.

Trial Examiner Norwood: Go ahead.

The Witness: It will just take a minute.

To accomplish that purpose the Bureau of Reclamation developed changes in the chemical composition, the
22875 idea being to reduce the alumina content, which is the quick acting element, and that required of the manufacture a special cement.

Later on—now I am coming to moderate heat cement—when the T. V. A., that is the Tennessee Valley Authority, and Tygart Valley, under the War Department, wanted a cement with a lower heat of hydration, they determined that the low heat cements had not been entirely satisfactory; in fact, they have not been used anywhere but the Boulder Dam, and they developed a modified specification, which went in the same direction as the low heat, but was moderately low heat. That also required adjustments in our raw materials and our manufacturing process, but not to the same extent as the low heat cements.

The witness identified Resp. Ex. 424 as the Government specification just referred to, drawn up by the Bureau of Standards and approved by the Director of Procurement for moderate heat Portland cement.

Q. Now, can that type of cement be manufac-
22876 tured by your company without special ingredients or unusual methods of processing?

A. At only one of our plants can it be manufactured without adjusting the raw materials and manufacturing process.

Q. Which plant is that, please?

A. Our Catskill plant on the Hudson River.

Q. And is the situation peculiar to the raw materials in that section?

A. Yes, sir.

Q. What would be required, Mr. Magee, to manufacture this moderate heat cement at your plant locations other than at Catskill?

A. Well, the alumina content has to be lowered, the silica content raised, and it is impractical to—it is not often always practical to take the alumina out. You can't do it. The only way you can do it is by adding iron and silica to take up part of the alumina. That is the iron. The purpose of the iron is to take up part of the alumina, leaving less alumina to go into combination with the lime and silica, thus meeting that requirement. So it is necessary to add iron ore and silica in the form of sand, or

something of that kind. All of that tends to reduce the proportion of lime, so that it is very often necessary to add a high grade expensive limestone in addition.

Q. Now, that being so, how does the cost of man-
22877 ufacture of the standard product at your Catskill plant compare with the cost of manufacture of the standard product at your Martins Creek plant?

A. Well, there is a differential on the standard product of ten or fifteen cents a barrel; that is, our product at Catskill normally costs ten or fifteen cents a barrel more than the Martins Creek standard product.

Q. And that also applies to moderate heat cement?

A. No, sir. Well, yes. There is no change required at Catskill, so that at that plant moderate heat cements are made at practically the same cost as standard cements.

Q. Were you describing Catskill or Martins Creek?

A. Catskill. At Catskill it costs the same as standard.

Q. Will you tell us about Martins Creek?

A. Martins Creek requires considerable adjustment in our raw materials. We have to add iron and sand and limestone.

Q. Is that moderate heat you are describing?

A. Moderate heat.

The additional cost there is somewhat more than the differential in cost between the two plants.

Q. Now, does this moderate heat specification which you have described meet the desire of Government engineers in regard to the heat of hydration?

A. Well, it seems to; at least they accept it when specified.

22879 (RESP. EX. 424 was offered and received in evidence.)

Q. Mr. Magee, in the case of specifications in general, what special raw materials are needed?

A. Iron ore, or some other form, such as pyrites—Blue Billy, they call it—copper slag, sometimes sand or some other form of silica, and pretty generally a high grade limestone to offset the addition of some of these non-lime components. Some plants, however, have the high limestone and generally require additional—

Q. Then, as I understand it, the practice of your
22880 company,—or, at least, you are in favor of this uniform standard specification?

A. Yes, sir. We always favor a uniform standard.

Q. And from your viewpoint as the operating head, is there any reason for your favoring the standard specification from a business standpoint?

A. Well, from our point of view we can better do what we have to do when we know what we have to do. Also, if we have a uniform standard, we are not required to have so many different storage spaces for different types of cements.

We also go further than that. We believe that a uniform standard leads to a better and higher grade cement, which is a better thing for the consumer.

Q. You mentioned the necessity of having different storage space if you had various special cements rather than the manufacture of a standard cement.

Is there any difference with respect to manufacturing from stock which enables you to regularize your production, for instance, quite aside from the storage feature?

A. Yes, sir. In making cement, by meeting a general standard we can make as much as we think is required to take care of our business properly and ship it from general stock as we get the orders, but when we have to make—interrupt our general operation to make a special brand of cement and store it in special places and in quanti-
22881 ties, sometimes difficult to ascertain how much of each kind of cement, you need to take care of that type of order, so that it is a good bit more difficult to handle special items.

Q. I take it, Mr. Magee, you are not just giving us your personal opinion with regard to these special cements, but I take it that you have discussed matters of that kind with the executives of your company?

A. Quite frequently. It comes up every time when we decide whether or not to bid on a special,—on a cement involving special specification. We always have to consider our ability to make it, our ability to store it, handle the job properly, and how much we are going to be required to handle, and all that sort of thing.

Q. Mr. Magee, I want to call your attention to an exhibit which we offered this morning, 420, and also to an exhibit which was offered by the Commission, 637-DD (handing to the witness).

Was there any unusual requirement in the specification prescribed by the New Jersey State Highway Department at the time referred to in that exhibit?

22882 A. Yes, sir. The subject covered by this memorandum, or whatever it is, was the case of a rather arbitrary specification superimposed upon the New Jersey State Highway specification by Mr. Gage, who is the head of the New Jersey laboratory, I believe, in which he required the contractor to buy cement which had to
22883 meet a specification of his own, which was a departure from the highway specification; and while the contractor was not compelled to buy that cement to meet that specification, he was held in line by the specification as to concrete, the compression strength of concrete taken out of his road, so that it would be very risky for him to buy cement that did not come up to Mr. Gage's arbitrary standard. That was the subject of that.

By Mr. Leisure:

Q. Now, you have described it as "arbitrary standard." Will you just tell us how it differed from the standard specification?

A. Well, it called for a higher silica content of cement and a compression strength which was not in the highway specification.

22884 Q. Now, did your company take any steps at that time with respect to the New Jersey Highway Department specification, which I described as a freak specification?

A. No, sir. We took part in the various conferences that were called by Mr. Gage to consider the matter. I personally attended the first conference which he called to put us on notice that he was about to make this specification, but we took no position one way or the other in regard to the matter.

22893 Q. Now I think you have told us that you couldn't have your plant far away from your power because of the use of these boilers, unless you had such boilers?

A. What I meant by that was that if you are in a location where you can buy power at a satisfactory rate it might be difficult to justify the installation of a waste heat power plant because it is a very expensive part of the plant and, of course, its economy depends, too, on the extent to which it is used. I mean by that the rate at which the plant operates; the amount of cement produced.

Q. And I take it from what you have said about the

dust precipitation you use both these in your plant; that is, the waste heat boiler and—

A. Yes, sir. Four of our eight plants have waste heat boilers and a waste heat power plant together with electrical dust precipitators, the purpose of the precipitators, of course, is to make a more satisfactory situation for our workmen and also to protect the surrounding public from a dust nuisance.

22894 The witness identified Resp. Ex. 431 as a bulletin issued by the Federal Government providing for the methods of sampling, inspecting and testing of all types of cements that come under the head of hydraulic cements—meaning Portland cements, high early strength cements and moderate heat cement. It is a testing procedure.

Q. Then, as I understand you, the Government uses the same methods of testing as the A.S.T.M.?

A. Yes, sir; that is in general conformance with the testing procedure in the A.S.T.M. bulletins.

22896 (RESP. EX. 431 was offered and received in evidence.)

Cross-Examination by Mr. Wooden.

Q. Mr. Magee, referring to those special New Jersey specifications in Exhibit 637, can you tell us whether or not those special specifications were withdrawn?

22897 Mr. Leisure: Mr. Wooden, do you mind if I give you the right number? It is 637-DD.

Mr. Wooden: All right; DD.

A. Withdrawn by whom, sir?

By Mr. Wooden:

Q. By the New Jersey Highway Department, or whoever it was.

A. They were never officially accepted by the New Jersey Highway Department and were never withdrawn by Mr. Gage.

Q. Did they ever become effective?

A. Practically so; yes, sir. The requirements on the contractor to meet his concrete specifications were such that he did not dare to risk purchase or use of cement that did not conform to this specification which was superimposed on the official specification.

Q. And bids were made on the basis of the superimposed specification, were they?

A. Bids were made with knowledge that that specification would be required, in effect.

Q. These Tygart River bids, that you referred to, did you make any difference in your bid on the Tygart River invitation because of the extra costs which you said would be involved at some of your mills if they met those specifications?

A. I don't know what our bid was, sir.

Q. Do you know whether or not you made any difference in the bid because of the extra costs involved?

22898 A. I know that the extra costs involved were taken into consideration at the time. That is because we had had experience making that type of cement at our Alabama plant. But I don't know what the bids were.

Q. Do you discuss with the other officials of the Alpha Company the question of prices to be quoted in connection with your knowledge about the costs of the company?

A. No, sir.

Q. Do you know to what extent the prices made by the Alpha Company are based upon or related to your costs?

A. No, sir.

Q. I believe you said that there were some competitors that, according to your tests of their standard Portland cement, show a higher tensile strength than the Alpha strength.

A. Higher and lower; yes, sir.

Q. Some running as high as 400?

A. Yes, sir.

Q. How many competitors show a higher tensile strength?

A. Oh, I don't know. It varies from time to time.

Q. Give us some idea, whether just one or two, or a matter of a few more.

A. No, not a large number, because our specification being a hundred pounds above standard, is a pretty high specification.

Q. Yours is 375?

22899 A. 375. There are not many that are higher than that.

Q. I believe you say that the

First, tell me what is the difference, or what extra difference between Alpha standard cement and the high early strength cement put on by some competitor?

A. Well, I am not familiar with the high early strength cements of our competitors. Generally speaking, however, it is a matter of higher lime content, higher fineness, and in some cases a double burning operation.

Q. Does it go through special processes that the standard cement does not go through?

A. Yes, sir.

Q. Does it have different ingredients, different proportions?

A. Different proportions of ingredients; yes, sir.

Q. Why is it the Alpha Company does not produce the high early strength cement?

A. Well, I would say, in answer to that question, that it is largely because we do not believe in the theory of high early strength cements. We are one of those who believe that the old-fashioned cements are better than the newer cements. We believe that the cements should be—that the qualities of durability should be emphasized and not the quality of high early strength. We do concede that there is some small amount of construction work which requires or seems to require high early strength cement. We
22900 don't think that market is very large, and we have not entered into it.

Q. Do you consider your Alpha standard Portland cement the equivalent of high early strength cement?

A. Better for 99 percent of the work. But for some small amounts of work, as I have said, high early strength may have a specific application which makes it superior to standard cement for that application.

Q. Is the principal difference between standard and high early the fineness of the grinding?

A. No, sir. That is one of the differences, a very important difference. It is very much finer. It is ground to a fineness of 2,500 centimeters per gram in specific surface, and higher.

Q. You have testified that your Alpha standard cement meets or more than meets standard specifications by a wide and generous margin. Am I correct?

A. Yes, sir.

Q. Has your company in recent years advertised in trade journals that fact?

A. No, sir.

Q. Why haven't you advertised it?

A. I don't know.

Q. I believe you said also that your standard cement you aim to keep at practically uniform quality?

22901 A. We aim to keep it at a uniform quality; yes, sir.

Q. And that that uniform quality also was sufficient to meet the varying specifications which were called for from time to time?

A. Yes, sir.

Q. In other words, your uniform quality is good enough for the whole range of specifications that you encounter?

A. No. From time to time we get special specifications which go into chemical composition; requiring changes in chemical composition.

Q. Do you meet many of the special specifications?

A. Not many. No, I would not say so. I would say that special specifications of that kind usually require adjustments to our raw material or raw materials.

Q. Well, is the quality of cement as you make it at your various plants of uniform quality, or do you vary it from time to time to meet special specifications?

A. Well, when we depart from our standard product, there is, of course, a variation.

Q. What I want to know is to what extent you do depart from your standard product.

A. Well, I don't know. The special specifications are still Portland cement. I should add it up as all one product. So that I have no figures in mind as to how much of our production is of that nature.

22902 Q. Making your product so uniform as you do, why do you have to have special storage bins depending upon variation of specification that you meet?

A. Because many customers, including some State highway—including most State highway departments who accept standard cement, nevertheless require that it be tested as it is manufactured and set aside for them to be drawn from their bins under supervision of their inspectors.

Q. What percentage of all your cement produced varies from the uniform quality which you aim to produce?

A. Well, of course that varies at different plants. I have seen times when we have had more than 80 percent, as much as 90 percent of the cement in our warehouse at a particular mill taken up with cement that was either made to a special specification or made to somebody's test of the standard specification.

Q. So far as your dealer trade is concerned, do you have any such question as that?

A. Generally speaking, no. They take standard cement without test.

Q. And what proportion of your production has gone to dealer trade?

A. I don't know.

Q. Is the shipping and loading of cement under your general jurisdiction?

22903 A. Yes, sir.

Q. You can't form any opinion from that as to what proportion of your cement goes to a dealer trade?

A. No, sir. I keep—I don't keep in touch with the orders that are received and filled. That is a clerical job with which I don't keep in touch.

Q. I believe you said that after all these years of stricter and stricter specifications for the production of standard Portland cement, that it was a moot question whether the quality had really been improved.

A. I think that is correct. I think it is a moot question.

Q. Don't you mean a mooted question?

A. You got me. I am not a grammarian. I can say there is a difference of opinion among consumers, engineers, and manufacturers. And I find myself sometimes feeling one way about it and sometimes another.

Q. What is, in brief, the nature of the difference of opinion on that question?

A. Why, there is some thought that these highly active cements, high strength cements, which require high lime and higher grinding,—not only some thought but some experience,—that those cements are not as durable, and in the end not as serviceable and as good as cements ground to a lesser fineness, which would tend to have more density, and lower lime cements, which would tend to have more soundness.

22904 Q. But I understood your answer given to the question of Mr. Leisure was that that same situation

applied to the changes in specifications for standard cement; that is, taken over a period of years; say, beginning 1904 and running down to the present time: It was a question of whether the more stringent requirements of standard cement had improved the quality of cement.

A. Perhaps I did. In that sense I don't think the question is quite as serious or important. I think the weight of opinion is to the effect that standard cement has been improved.

22907 Q. When did Alpha increase its tensile strength cement to 375 pounds, in 7 days?

A. From 325 to 375 over the period of the last 10 years.

Q. When did you reach 375?

A. Two or three years ago.

Q. Did you reach it at all your plants?

A. Not simultaneously but eventually.

Q. Just tell us, briefly, how standard Portland cement at the present time differs from standard Portland cement back there in 1904?

A. Seven-day tensile strength is 275. It was 150 to
22908 200 in 1904. The fineness which was 75 percent passing 200-mesh at that time was gradually increased and finally eliminated entirely, as being impractical. That is, the tensile strength got so far ahead of fineness that the fineness, 200-mesh fineness test became considered of no importance and was taken out of the specifications 2 years ago.

22912 Q. Now, with regard to the location of plants: I understood you to say that generally speaking the advantage of a good raw material deposit and a good mill location would be offset by advantages of proximity to a good market, is that right?

A. By disadvantages of proximity—the advantages of raw materials are likely to be and most always are offset by the disadvantage of—

Q. Would you say that with reference to the Alpha Mills—or do you make that statement as to the industry generally?

A. Both.

Q. Would you say that the Lehigh Valley Mills have a poor raw material advantage and a good market, or a good market and a good raw material advantage, or what?

A. Sort of in between. The raw materials are fair; the coal price is pretty high; fairly close to a good market.

Q. It has pretty good advantages of all sorts, hasn't it, or did, before this deterioration took place?

A. No; the coal price is pretty high.

22913 Q. How about the Buffington mill of the Universal-Atlas? Does it have a good market location?

A. I would say so.

Q. Does it have a poor location from the standpoint of raw material?

A. Very.

Q. Doesn't it use slag from the steel mills?

A. About 40 per cent of their raw material is slag.

Q. What about some of the mills in Michigan, like the Huron mills? Doesn't it have a good market location?

A. I would say so.

Q. Doesn't it have a good raw material supply?

A. No, sir.

Q. They claim they have. You say not?

A. Not in my opinion.

Q. Well, why, in the nature of the thing, should a good market location involve and offset a poor mill location and vice versa?

A. I guess because they don't build big cities on limestone and coal deposits.

I can't answer that question otherwise. That is my idea. You get the idea?

Q. There is the Buffington mill right close to Chicago, a very good market.

A. Yes, sir. There is no limestone or coal there.

22921 Q. What is the range in variation, or the range in the total costs of production at your various Alpha mills, high or low?

A. I think I have already said there is a differential of about 10 percent, with the exception of one of our units.

Q. What unit is that?

A. Jamesville, N. Y.

Q. And that is how much there?

A. Oh, maybe 15 percent.

Q. What my question was intended to ask was, What is the cost of production per barrel at your lowest cost mill and at your highest cost mill?

A. What do you mean by "cost of production"?

Q. Mill cost.

A. Well, I don't know.

Q. You can define it any way you like so it is clear what production is.

A. Of course, cost is a varying thing, depending on period of time and what cost you are talking about,—and the period of time.

Q. The costs that you determine, that is your particular function, how far do they go? Do they stop at the point of loading and shipping of cars?

A. No. It is the over-all cost that is the cost that I am interested in.

Q. And you also know other costs of production, do you not?

22922 A. It depends on what you mean by cost of production. There are, of course, various stages in building up costs, starting out with the quarrying, and over-all cost. The only cost that means anything is the over-all cost.

Q. But before you get your over-all cost you also get your mill cost, do you not, various quarrying operations?

A. We dig into it, and once in a while analyze it and find out what it is at various stages of the operation.

Q. Well, what I would like to know is what the mill costs are, exclusive of sales costs and general over-all.

A. I can't tell you. I don't carry those figures in my mind.

Q. Do you remember that it is 10 percent—speaking of over-all cost?

A. I am speaking of over-all cost.

Q. And you don't know what the over-all costs are at any of your plants?

A. I don't have any definite figures fixed in my mind for any particular period of time; no, sir.

Q. How does it happen that you can remember that the difference is 10 percent, or 15 percent?

A. Well, that is the result of comparisons that I make from time to time. I don't remember the basic figure, but I do remember the information that I go after to find out what that variation is.

22923 Q. Haven't there been times when your mill costs at various mills varied as much as 30, 40 cents between the mills?

A. Absolutely not.

Q. Per barrels?

A. No, sir. There may be on a particular day or a particular—

Q. For a year?

A. No, sir. Absolutely not.

Q. Can you say whether or not for the year 1928 your cost at the Martins Creek plant was about 80 cents a barrel?

A. Well, I don't remember what the cost was, but I know it was not as low as 80 cents a barrel.

Q. Mill cost?

A. I don't know what you mean by "mill cost."

Q. You have no terminology for costs that are confined, —I would say mechanical or physical process, eliminating sales overhead?

A. The cost of manufacture would be cost that was considerably more than 80 cents in 1928, although I don't know what it was.

Q. Could you say whether the total mill costs for 1928 to the Belleview plant ran as high as $1.58 a barrel?

Mr. Leisure: I object to that. The witness has already said that he does not know what Mr. Wooden means when he says "mill cost." Mr. Wooden is referring to
22924 some document and he should make clear to the witness what it is he means when he uses the term "mill cost," so that there will be no confusion between the witness and the question.

The witness has already said he don't know what he means when he says "mill cost." Now he repeats the words "mill cost" in the next question. He should inform the witness what he means by the term, and I object to the question unless it is made clear.

Trial Examiner Norwood: Can you make that clear to the witness? Do you know what he means by the term "mill cost"?

The Witness: Do I?

Trial Examiner Norwood: Yes.

The Witness: No, sir.

Trial Examiner Norwood: What costs did you compare when you said that there was a variation in your previous testimony?

The Witness: The over-all cost.

Trial Examiner Norwood: That over-all cost includes mill cost and what else?

The Witness: Mill cost, shipping cost, sales cost, cost of doing business, and everything that there is.

Trial Examiner Norwood: In that sense, what do you mean by mill cost?

22925 The Witness: I don't know. Mill cost is a term that I don't use and haven't encountered. I don't mean anything by mill cost.

By Mr. Wooden:

Q. Well, your costs for the different mills, your manufacturing and quarrying costs, vary, do they not, as to the different mills, while your sales cost and overhead, that has to be distributed over all your mills, doesn't it?

A. Everything has to be distributed, of course.

Q. The cost of production at a particular mill doesn't have to be distributed anywhere else, does it?

A. Cost of production at the mill; no, sir.

Q. That is what I am getting at.

Can you say whether or not in 1928 the cost of production at the Belleview mill was as high as $1.58?

A. I still don't know what you mean. There is depreciation in there, for instance. Is that in your mill cost, or is that only in over-all cost?

Q. Do you know what the cost of any item of production is at any of your mills that you have been talking about? In other words, a quarrying cost, for instance; how much is it at any given mill; can you say?

A. Not precisely. I couldn't give you any figure unless you named the particular period of time, and even then I couldn't recall it from memory.

22929 The capacity of the various Alpha mills is figured on the basis of a daily capacity; meaning twenty-four hour operation, and the twelve and a half total capacity figure is based also on a twenty-four hour operation. I do not know whether that is the capacity which Alpha has reported at any time to Mr. Mallory. The total capacity is based on a twenty-four hour operation for 365 days. Alpha operated one of its plants, that at Birmingham, for 365 days last year.

22932 Q. You testified that your fuel costs are 80 per cent higher than when you went into the industry. Is that on a per barrel of cement basis?

A. Cost per barrel, yes, sir.

Q. Of cement?

A. Yes.

Q. Do you know what your fuel cost per barrel of cement is?

A. It varies at different plants and at different times. It depends, of course, upon two things: The cost of fuel delivered to the plant and the amount used per barrel. Both of those elements vary from month to month.

Q. You don't have any figure in mind for any plant during any period of time?

A. No, sir. One figure, sir, I have in mind.

22933. Q. All right.

A. The cost of coal, which is $4 now, as against $2.50 when I entered the business.

Q. Per ton?

A. Per ton; yes, sir.

Q. The cost of coal in producing cement, the cost per barrel is something that varies?

A. Generally speaking we are using more fuel per barrel than we did.

The increase in the specifications has required the use of more fuel.

22935. Q. Isn't the rate of operation one of the largest factors in determining what the mill costs of production would be?

A. One of the factors. I wouldn't say the largest factor. The largest factor I know of is labor rates, which have gone up four-fold, in my time.

In spite of the fact we only use half as much labor we get a net result of our labor cost doubled, and that is general.

22939 New York, New York.
September 12, 1939.

22940 JOHN F. MAGEE resumed the stand and testified further as follows:

Cross-Examination by Mr. Wooden (Continued).

22943. Q. Mr. Magee, with reference to your labor costs per barrel of cement, have they increased or decreased during the last ten years?

A. Materially increased.

22944 Q. From what to what?

A. Well, I do not know exactly what they are, whether it is twenty-five per cent. or thirty per cent.

Q. That is on a per barrel basis?

A. That is on a per barrel basis.

Q. When did the increase take place?

A. Since 1932, there was a downward tendency. It ranged from 1929 to 1932, and 1933, and then an upward tendency from then until the present date, but the use of labor per barrel, the tendency has been upward from 1928 and 1929, which was a period of high production, to the present time when business is not anywhere as strong a volume of business as it was.

Q. Does volume of business affect the labor cost per barrel?

A. Very materially.

Q. With regard to deterioration of clinker, what is the cause of that deterioration of clinker in storage?

A. Well, if it is in open storage, the deterioration is very rapid because of the effect of the elements. Water and air have an effect of disintegrating the clinker, tending to develop some amount of carbon dioxide, and high loss on ignition, having the general effect of deterioration of the quality.

In covered storage, it is not quite so prevalent 22945 but it takes place even then.

Q. Is it caused by the absorption of moisture?

A. Partly the absorption of moisture, and partly unabsorbed moisture. I mean a good rainstorm, a clinker in open storage would have a bad effect upon it even if all of the water was not absorbed. Again, the effect is not quite so pronounced or prevalent with hot clinker; that is, clinker that is not mechanically cooled, but is stored hot, because the water is evaporated rapidly and turned into steam, but after the clinker cools off, which depends on the amount of cooling you have, whether it takes a day or two to cool off if you have cooled it mechanically, or several weeks, if you cool it naturally; after it cools off, the effect of the water is quite severe.

Q. Isn't the absorption of the moisture that causes the deterioration?

A. Partly so.

Q. What is the other cause?

A. I say, moisture has a bad effect whether it is absorbed or not, it has an effect.

Q. Then, moisture is the cause of deterioration whether absorbed or unabsorbed?

A. Not only because of that; it is not the only cause, no, but it is one of the causes. I think there are more.

22946 Q. I asked what else besides the absorption or non-absorption of water was the cause of deterioration in clinker?

A. Yes, sir. Just so it is understood that it is not the only cause. You might infer that if it didn't get wet it would not deteriorate.

Q. I understood the distinction between absorb and unabsorbed, one as against the other. Is there any other effect; or is there any other factor besides moisture that causes deterioration?

A. Yes, the effect of the air.

Q. Moist air?

A. No, oxygen combines with the lime to make carbon dioxide.

Q. Is there anything else?

A. I do not think of anything at the moment. I do not want to say nothing else, if I am reminded of it.

22950 Q. Are the wet process mills in the Lehigh Valley the last mills to be built and the most modern?

A. Yes, sir. No, wait a minute. Those are two questions. They are the last, but I would not say the most modern. I think there are some plants that have been built around 1900 that have been kept up to date as the industry has developed so that they can be said to be just as modern in terms of process as a plant built last year. That is what I mean by that differentiation.

Q. Does the absorption of moisture by clinker facilitate the manufacture of cement by the wet process?

A. There was a time when we engineers thought it facilitated grinding; that by the disintegration of the clinker grinding was facilitated to some extent. That is true up to a certain point, but it works up only to the point where it means it blocks up the mills. When the clinker gets in such condition that it blocks up the mills, then it

22951 flows down the grinding. There is a point where we have to watch the grinds, to see whether it is blocking up the mills too much. We store the clinker, say, for a period of two or three months prior to the grinding. It might be said to be beneficial because it does permit more rapid grinding to some extent, but after that it really slows down the work. However, you cannot say two or three months with any degree of definiteness because it may be two or three weeks, all depending upon the particular situ-

ation which you are facing at that time. There is no rule that you can lay down with any definiteness, in a situation of this kind.

There are too many factors that have to be taken into consideration in each and every case.

If it commences to block up the mills, then all of your saving is gone out of the window. Now, in view of the deterioration of quality, which has come into the matter, that is one thing that we can no longer consider it as an increase in grindability, or an improvement in grindability because the quality deteriorates, it deteriorates with age, which is much more important to us.

Therefore, we look at it from an entirely different direction now.

Q. There is a partial offset, if you use the wet process by virtue of the fact that you can grind it better?

A. Up to a storage of two or three months, but
22952 beyond that the grinding gets harder and more difficult and the quality deteriorates very rapidly, so that only up to two or three months, up to a period of two or three months could that be said to be so, and in some cases it may be two or three weeks, as I said before, but up to a period such as that, there is some offset beyond that, none.

Q. You told us about improvements in technological methods of production, the use of bigger and better crushers and crane conveyors, and electric shovels, of grinding machines, being more productive.

Have those things brought about a decrease in the cost of production, per barrel of cement?

A. They have not brought about a decrease. They have tended to bring about a decrease, but as the cost of the labor rose, as fuel cost rose, and iron, and steel, and brick, and all of that kind of stuff goes up, that offsets the savings which are made by installing bigger and better machinery.

The trend or tendency is upward. Our costs would be three or four times what they were in 1913, when I came into the industry—our costs today would be three or four times as much if we had not installed new machinery and tried to use things that were developed to save labor as time went on, and as these things came up.

Costs were rising steadily during all of this time.
22953 That is true not only in the cement industry but other industries as well.

Q. Have your total costs per barrel increased or decreased since you went into the industry?

A. Increased.

Q. How substantially?

A. Well, I do not know that I could give you that. I said the other day that labor costs have doubled and fuel costs have increased eighty per cent., and iron and steel costs are certainly higher, and I do not think any amount—well, I do not have in mind just what the increase has been in the over-all costs.

Q. So far as they go, and considered by themselves, I take it that your testimony is that the technological improvements have reduced costs per barrel?

A. No, sir. They have tended to reduce the cost per barrel.

Q. I do not mean the over-all cost.

A. No, not even in labor. We have cut our use of labor in half, but the rate is four times as high, with the net result that our labor cost has doubled.

Trial Examiner Norwood: Does that answer the question?

By Mr. Wooden:

Q. Will you repeat that?

22954 A. I say no, because the costs have not been reduced, per barrel.

Q. You do not understand my question, then. I mean, comparing the technologically improved methods where the former methods used to accomplish the same result, were they technological improvements for reducing those particular costs?

A. No, sir. They have tended to reduce, but the reduction has been offset by increased prices, so that the net result is an increase.

By Trial Examiner Norwood:

Q. Have they reduced those particular factors?

A. For the moment. For instance, if you install a piece of labor-saving equipment for the moment, where your labor rate remains the same as it is, then there is a decrease.

By Mr. Wooden:

Q. In other words, take the case of grinding. That cost of grinding has been decreased by the installation of better machines?

A. The cost would be higher than it is now if we had not met that problem and made those improvements.

Does that answer it?

Q. Almost, not quite. Didn't your installation of the improved grinding machines, for instance, lower your grinding costs compared to what they had been?

A. For the instant. For the instant.

22955 Q. What do you mean, "for the instant," do you mean five minutes

A. I mean as soon as the element changes. In other words, as long as the element of cost remains as they were at the time we put the equipment in there was a reduction, but our improvements are always made to offset increasing prices, increasing labor rates, and so forth, and even if we have not that in mind at the time we make it, that always follows.

Q. Hasn't one of your big items of cost, say, since 1930, been the fact that your mills were not running to full capacity?

A. Yes. That has its influence in the over-all cost.

Q. It would not affect the cost per barrel of grinding, for instance?

A. Yes, sir.

Q. It would increase that?

A. Oh, yes. Do you want me to explain why?

Q. And all these other prices?

A. Oh, yes.

Trial Examiner Norwood: I would not explain unless he asks you to.

By Mr. Wooden:

Q. Did your changes in equipment at the St. Louis, Missouri, mill improve the quality of your product there?

22956 A. That is right.

Q. When did that take place?

A. Progressively.

Q. Has the quality of your St. Louis mill been better than that of other Alpha mills?

A. No, sir.

Q. Does that mean that they are all of the same tensile strength?

A. As near as we can make it. St. Louis is up to our standard of 375 pounds per sq. in., which is our standard, although it may vary a little bit, but it will average that,

sometimes a litttle lower and sometimes a little higher.

22960 Q. I was going to ask you this. How do you reconcile your testimony that the advantages and disadvantages of various mills as to location, raw materials, and markets, and so forth, offset each other with the fact that the total costs at your various mills show a variation?

A. Well, when I make the statement that there is an offsetting influence, I do not mean that the result is identical. I mean that within reasonable limits—within reasonable limits, those things offset each other—I mean, the things are offsetting so as to come out at about the same result.

Q. Well, this is a very elastic term, "about the same place." You said ten per cent. or fifteen per cent. of the over-all costs?

A. Yes. Ten per cent. or fifteen per cent. of the over-all costs. I will stick to that.

Q. Well then, that is really a rather substantial variation, or would you say that is a matter of opinion?

A. Well, I do not know, that is twelve cents or fifteen cents a barrel, twelve cents, and it may run up to

22961 as high as twenty cents.

Q. You do not consider that as a material advantage as one mill against the other, to have a lower cost of twelve cents or fifteen cents a barrel?

A. That depends on other circumstances. It may be that—the element of time may come in there and it may be that it may have it for a short period of time, depending on circumstances, and then another mill may have it for another period of time depending on circumstances.

Therefore, you cannot say definitely one way or the other about that.

Q. If one mill has a consistently lower total cost, than any other; doesn't that reflect the net advantage of that mill as to its location, raw materials, and markets, and every other factor that enters into the question?

22964 The Witness: Well, I think it is obvious when you use the term "every other factor" that introduces that question, and naturally it reflects everything that makes for a difference in cost. I do not like to say yes or no until I know what you have in mind by "every other factor."

You see, that covers a great deal of territory.

By Mr. Wooden:

Q. Advantage or disadvantage as to its location.

A. Well, the question says, "Doesn't that cost reflect those things?" It reflects differences in cost, it reflects everything including the rate of operation, whether the plants are well designed, and well operated; or not, which is very important.

Now, is that included in the "every other factor"?

Q. Yes.

A. In things like that, and capital investment, which carries the rates of depreciation, and idle expense, that is, the period of time that the plant is not operated, and
22965 the charges necessary to carry the plant, and its organization when it is not being operated, if all of those things are included, well, of course—

Q. That then reflects the net advantage of all those offsetting advantages and disadvantages, does it, the different in cost reflected?

A. It might reflect to something else. I don't know. You are getting a little bit over my head.

22969 Q. I am now referring to exhibit, Respondents' Exhibit No. 403-F, which contains the names of the committee making the recommendations for those specifications.

Will you tell us, so far as you can, what the connections or affiliations of each of those parties are, or were?

A. Is there a cover page to this, or is this all
22970 there is to it? I am trying to get some idea when it was published.

Q. I think this is for the year 1904.

A. That will help me.

Q. Yes. 1904.

A. I thought I gave it to you the other day when we were in Washington.

Q. No, that was for a later date. This is for an earlier date that I am inquiring now.

A. Now, do you want me to refer to each name, and see if I can identify it as to what that person's connection or affiliation was?

Q. Yes.

A. George S. Swayne, this is Committee C of the A. S. T. M., which later became C-1. He was the chairman. I do not know who he was. He was either a Government man or a member of some civil engineering society. I don't

know. I guess I had better not say unless I do know who he is.

Q. The next one?

A. George S. Webster, vice chairman. I do not know. Richard L. Humphrey, secretary, he was connected with the Government, with a Government department of some kind. I do not know what. F. H. Brownbridge, I do not know. Booth, Garrett and Blair, they are well known contractors. They were and still are. C. W. Boynton, I do not know.

Mr. MacIntyre: Was he with the old Atlas Com-
22971 pany, now a part of the Universal-Atlas Company?

The Witness: I don't know. Spencer Costey, I don't know. A. W. Dow, I don't know. L. Henry Dumary, I don't know. A. F. Grestell, was president of our company. Edward M. Hegar, with the Universal Company. W. H. Harding, I don't know. Olaf Huff, I don't know. Luff Bany, I don't know—just a minute, Luff, Bany, and Spreckman, oh, yes, they were consulting engineers, and part of their work was doing the testing of cement for consumers who wanted their cement tested.

Robert W. Leslie, he was a cement man, either with the Giant Company, or its predecessor, the American Company. F. H. Lewis, I don't know. John B. Lober, he was with the Vulcanite Company, Andrea Lundtteigen, I don't know. Charles F. McKenna, I don't know. W. W. Mackay, I don't know. Charles A. Matcham, was a cement man, just what company it was, I don't know. He was with a company that—a company in the Lehigh Valley at that time, but I don't know which one because he was at times associated with two or three different companies, and that is the reason for my confusion.

Spencer B. Newberry was either then or later connected with the Medusa Company, and also was somewhat of an engineer and scientist. J. M. Porter was dean of the Civil Engineering School of Lafayette College. The next
22972 one was Joseph F. Richard, I do not know who he was. Clifford Richardson, I don't know. L. C. Sabin, I don't know. Harry J. Seaman, I suppose he was a Seaman, who was a cement man with the Atlas Company, I think, although I am not sure of the Harry J., but there was a "Seaman" who was connected with the Atlas Company.

The Witness: S. S. Voorhees, I don't know. Then, if I

maybe permitted to say so, there are two other names, the American Institute of Architects, W. S. Eames, president; American Railway Engineers Maintenance of Way Association, H. G. Kelly, vice-president. I do not think he is a cement man, he is not the cement-industry Kelly.

By Mr. Wooden:

Q. Do you know who John G. Brown was, whose name appears in that exhibit, I refer to Respondents' Exhibit No. 403-S.

A. No, sir.

Q. Do you know who A. L. Johnson was?

22973 A. No, unless there is some way of identifying here. If I could read this over, I might be able to identify him.

Q. I refer to A. L. Johnson that appears on Respondents' Exhibit No. 403-Y.

A. I might if I saw it. It might bring it back to me.

Q. I am not asking you that. I simply wondered if you recognize him.

A. If I read the discussion, I might be able to surmise. I do not know him by the name; no, sir.

Q. To what extent does natural cement meet the specifications for standard cement? How close does it come?

A. The standard specification for natural cement is considerably lower. Some natural cements, of course, exceed specifications to the point where they maybe in a ratio just below standard specifications. I do not believe there are any that meet or that might meet standard specifications at least, we have never analyzed or tested any in our laboratory?

22993 *Redirect Examination by Mr. Leisure.*

22995 Q. Now, in answering some of Mr. Wooden's questions about High Early Strength cement, you mentioned 2100 fineness. What do you mean by that?

A. That is a new gauge, or a new method of fineness determination that has come in, in recent years. It is a new test. It is a specific surface of the cement which is measured by a turbidometer. This is cement suspended in an oil and a light similar to the electric eye is sent through it and by some sort of calibration the amount of surface area; that is, the area of each particle of cement in one gramme sample is determined and added together to

total of 1500, or 2000 or 2500 standard centimetres per gramme. Ordinarily cements pass ninety per cent. through a 200 mesh, I expect it to run around 1500; the tendency now is to get higher than that and the 200 mesh goes up to 2000, and as the Bureau of Standards, and as some of the State Highway laboratories have dropped the 200 mesh as a criterion of fineness and have adopted the surface area two years ago, and the A. S. T. M. dropped the 200 mesh from their specifications and have set up a tentative standard fineness surface area test, which no doubt will be adopted in due time by all bodies interested in the matter. I think it will be the standard type of test.

Q. Now, on Friday, in discussing the subject mat-
22999 ter of exhibits with Mr. Wooden, he asked you how you determined the rate of capacity under which you operate, and you gave certain sources of information, and in doing so, you did not refer to any statistics furnished you by Mr. Mallory, was that an oversight on your part?

A. No, sir. I did not have any statistics furnished by Mr. Mallory in determining our operating schedule. I think that is what you have reference to.

Q. Yes. One more question, Mr. Magee: we had some discussion this morning as to whether your statements with regard to the variation of your mills of ten per cent or fifteen per cent, whether you had any definite figures in mind. Just in order to have the record entirely clear on that, I would like to ask you whether or not when you stated in answer to Mr. Wooden's question, assuming all of your plants operate at the same ratio of production and capacity there would be a differential of ten per cent or fifteen per cent, did you or did you not except the Jamesville plant?

A. Yes, sir, and I did not include the Bellevue plant. I did not include them in my statement because that plant has not operated for ten years. I excepted only Jamesville, but if I had thought of Bellevue, I would have because that was not a well designed and well operated plant. My
23000 statement was based on plants well designed and well operated, and operating at an equal rate of capacity. Does that answer your question?

23001 Mr. Wooden: Now, your Honor, I wish at this
23002 time to make a formal motion to strike the testimony of this witness regarding the subject of costs on the ground that he has been unable to produce and pro-

vide any exact information or figures and professed to be in ignorance of exact figures, and has confined his testimony to relations and trends, and things of that sort.

I move that this testimony on this subject be stricken unless respondents provide the record cost data which I mentioned at the close of my cross-examination. I move to strike, further, on the ground that the testimony regarding the costs, as I contended as the outset, was irrelevant and immaterial.

Trial Examiner Norwood: I think that goes to the weight rather than the admissibility.

23010 F. M. COOGAN was thereupon called as a witness for the Respondents, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Leisure.

I am vice president in charge of sales of the Alpha Portland Cement Company, a position which I have held
23011 since 1917. Previous to that time and at different times I was the traffic manager and purchasing agent and secretary. I first became associated with Alpha in 1902. Prior to my association with Alpha I did not have any particular experience in the cement business. Prior to my employment by Alpha I was employed by a railroad company and in that position I handled the shipments from the warehouse of Alpha located at Alpha, New Jersey. In that way I became generally familiar with Alpha's shipments but not any of the details of the business. From 1902 to 1917 I was purchasing agent and
23012 traffic manager. Later on, I was made secretary, which brought me directly in touch with the sales.

In 1917 I was elected vice president. My duties as vice president in charge of sales are to study and set sales policies of the company, to set the prices at which we sell, to guide our salesmen and sales officers and do everything necessary to further the sales of Alpha. The matter of prices and sales policies, if important, are done after consultation with my associates in Alpha.

Alpha's predecessor company was incorporated in 1895. The present Alpha Portland Cement Company was organized in New Jersey in 1916, and has its main office at Easton,

Pennsylvania. It has branch offices in Chicago, Illinois; St. Louis, Missouri; Ironton, Ohio; Birmingham, Alabama; New York, N. Y.; Boston, Massachusetts; Richmond,
23013 Virginia; Pittsburgh, Pennsylvania. It has warehouses in Green Bay, Wisconsin; Milwaukee, Wisconsin; Washington, D. C.; Miami, Florida. All are warehouses with the single exception of Washington, D. C. where we have what is referred to as a silo. In other words, we have a silo where we store cement in bulk; and we do not have facilities for bagging that cement or packaging that cement. Usually when I refer to a silo, it is a place where you store bulk cement, and where you have facilities for packing such cement in bags. In Washington,
D. C. we do not have such facilities but deliver the
23014 bulk cement directly to trucks. A warehouse is a place where we store packaged cement and also have, in addition, silos. For instances at Easton we also maintain a warehouse at that point where we store packaged cement. At all of our other warehouses we store packaged cement only. We deliver packaged cement to our warehouses and we deliver bulk cement to our silos.

I have been a director of Alpha since 1917. Alpha is not now and has not been affiliated with any other cement manufacturing company nor are its officers or di-
23015 rectors with any other cement company at the present time. Mr. Boettcher was a director of Alpha from the time we acquired some of our western plants in which he was interested until April 1938. He has not been a director since that time. The circumstances under which he became a director were that in 1920 Alpha purchased three plants, one located at LaSalle, Illinois, one located at Ironton, Ohio, and one at Bellevue, Michigan. One of those plants had been in the hands of the Alien Property Custodian and Mr. Boettcher and some other individuals took over that plant and later Mr. Boettcher acquired the Ironton plant. I am not quite sure whether they owned the Bellevue plant at the time we took it over. However, it was included in our purchases from them. When Alpha took over these plants, three men who had been interested in the plant became directors of Alpha, and one of these men, Mr. Irvin, became an-
23016 active officer and employee of Alpha and had no connection with any other plant. Another man

named MacNider became an Alpha director but he died many years ago.

Concerning competition in any territory with The Ideal Company or its affiliates Alpha competes very slightly with the Arkansas plant which is one of the Ideal plants. We are not entirely in competition with Ideal except in a very limited territory, that is, only in a small portion of Louisiana, some parts of Arkansas, and a little of Mississippi.

Alpha's stock is on sale to the public and is listed
23017 on the New York Stock Exchange. At the present time its stockholders number approximately 2,250.

Alpha originally started with one plant located at Alpha, New Jersey. In 1902 a second plant was built at Alpha, New Jersey and during the latter part of that year the plant at Martins Creek, Pennsylvania, was purchased from the Martins Creek Portland Cement Company. In 1904 there was another plant being erected at Martins Creek, Pennsylvania which got into some sort of financial difficulties and Alpha took over that plant and completed it. In 1909 Alpha purchased the Buckthorn Portland Cement Company at Manheim, Pennsylvania and a controlling stock interest in the Catskill Portland Cement Company, with a plant at Alston, New York.

Alpha, New Jersey is generally considered to be
23018 in the Lehigh Valley. The capacity of the first plant built at Alpha, New Jersey was approximately 600,000 barrels per year; the new plant was built for a capacity of approximately 1,200,000 barrels per year. At that time there was very little limit to the market served by those two mills because in those earlier days Alpha was shipping cement to almost all points of the United States, and in fact very far into Canada there were some competitive domestic cement mills. From 1905 to 1910 these mills were operated at practically capacity. I
have told you about the mills that Alpha was oper-
23019 ating up to 1910. The acquisition of the plant at Martins Creek, Pennsylvania, located in Lehigh
23020 Valley, gave Alpha additional capacity. The first mill Alpha acquired at Martins Creek had a capacity of approximately 600,000 barrels per year. The new plant that was purchased and finished by Alpha had a capacity of a million and a half barrels per year. Those two mills gave Alpha an additional capacity of 2,100,000 barrels. Alpha purchased those two mills because the raw

material at Alpha, New Jersey was not entirely satisfactory and Alpha wanted to keep on manufacturing in that vicinity and get in new locations which might be more favorable than its Alpha, New Jersey location.

23031 The circumstances at the time we purchased the plant at Manheim, West Virginia were that Alpha Portland Cement Company had a very large business in the central west, particularly, Ohio, Indiana, the southern part of Illinois, Kentucky, and the western part of Virginia and West Virginia. That plant was favorably located in that section, that is, in a section where all of this territory could be reached on reasonably favorable freight rates, and we were able at that time to market cement in competition with some of the newer mills that had been built in the central west.

23035 The capacity of the Manheim plant was about 600,000 barrels per year. In 1909 Alpha acquired the controlling stock interest in the Catskill Cement Company located at Alsen, New York, sometimes referred to as our Hudson plant.

Q. What were the circumstances which led to your acquisition of that?

A. We figured that that plant was admirably located for serving the New England market, and perhaps New York City market, and some of the northern New York State markets, and it would help us serve the territory which we were then serving of the Lehigh Valley mills. At that time the Lehigh mills, Lehigh Valley mills, were running to practically capacity and we simply bought that mill in order to take care of the trade in some sec-

23036 tions that could be served advantageously from that mill, more advantageously than from the Lehigh Valley mill.

The capacity of the Manheim plant was about 600,000 barrels a year.

All of these plants were acquired prior to 1910; the two Martins Creek plants, the one at Alsen, New York, the one at Manheim, and the two mills at Alpha, New Jersey. Up to the time of the organization of the present Alpha Company there were five plants wholly owned, and a sixth in which a controlling stock interest was held. Up to 1910 the total capacity of Alpha's plants was approximately five and a half million barrels per year.

Q. Do you know what Alpha's total sales were about that time?

A. They were very close to capacity, approximately five million barrels per annum.

23037 Q. What were Alpha's total sales in 1937?

A. About four and a quarter million barrels.

Q. Today?

A. Today, I should say they are close to four million eight hundred thousand, or at the rate of four million eight hundred thousand, or five million barrels per year.

23038 In 1920 Alpha acquired the LaSalle Cement Company with plants at LaSalle, Illinois and Ironton, Ohio. The acquisition of the plant at Bellevue, Michigan, was coupled with this deal. In 1922, Alpha acquired the plant at Continental, Missouri, near St. Louis, which was formerly owned by the Continental Cement Company. In 1928 it purchased the Phoenix Portland Cement Company, with a plant located near Birmingham, Alabama.

23039 In 1920 Alpha purchased those plants because in the early days and up until 1914 and 15 it had enjoyed a very large business in the Central West. The plants were purchased to enable Alpha to reenter those markets where it had previously been supplying cement. The plant at St. Louis, Missouri was purchased because it was offered "on a reasonably favorable term", and it also enabled Alpha to enter a market where it had previously been a factor in the [cement] business. The same thing is true with regard to the Birmingham plant, where Alpha used to do a large coastwise business; "and reshipped the cement from the ports inland in the south, which gave us quite some southern customers." The plant at Birmingham was fixed up in order to round out Alpha's shipments and to reenter the field where it had formerly had a great many customers.

Q. You told us, Mr. Coogan, about having been out of the business for a time, and you told us how you reentered. You have not told us what happened in the meantime which necessitated this reentering.

23040 A. While we were simply driven out of that territory by the fact that new mills were springing up and it became impossible for use to meet the competition in those territories. We simply had to withdraw

from that. We kept into that territory as long as we felt that we could go on, and for some little time, in some cases, we were able to get a little premium for our cement, but after a time that wore out, and then we were completely just out of those markets.

Q. As I understand you, the purpose of acquiring these mills that you have just told us about, was to reenter these markets?

A. That is correct. Yes, sir.

Q. What is the area served by your Martins Creek, Pennsylvania mills, Mr. Coogan?

A. The Martins Creek mill serves the New England states, the middle states, and Maryland. I would like to repeat that; the New England states, New York, New Jersey, Pennsylvania, Delaware, and Maryland, with perhaps a few shipments into the eastern part of Virginia or West Virginia.

Q. How did you determine and how do you determine from which mill you will make a particular shipment?

A. Well, that is largely determined for us by our customers; that is, with certain limitations. Of course, if the freight rate is unfavorable, we won't ship except from the one mill, but in the case of the mills in the east, take our Hudson River Mill and our Lehigh Valley mill, 23041 where the shipments are virtually interchangeable, we have our customers' preference. Some of our customers have been using Lehigh Valley cement for a number of years, and they insist on having Lehigh Valley cement, and we have some eighteen, fifteen or eighteen competitors that are willing to give them Lehigh Valley cement, so we naturally have to do the same thing.

Then, we have also some customers who like the Hudson River cement and if they want it, we give it to them. The shipments made from those two mills go generally into the same territories and that is also true of Jamesville mill. I completely overlooked that Jamesville mill, which was acquired in 1917.

Q. I see.

A. I think I would like to correct that and say that in 1917, we acquired the plant of Thomas Millen Company at Jamesville, and we have been operating it since that time.

Q. What is the largest single market of the mills taken together?

A. We [redacted] New York City.

Q. I mean of Martins Creek?

A. New York City would be the largest market.

Q. I do not believe I asked you the territory served by your Manheim, West Virginia, mill.

A. Manheim, West Virginia mill serves West Vir-
23042 ginia, part of Virginia, part of Pennsylvania, eastern Kentucky, and a small portion of Ohio.

Q. What about your Ironton, Ohio, mill. What territory does that serve?

A. The Ironton mill covers Ohio, the eastern end of Kentucky, part of Indiana, the western part of Virginia, and the western part of West Virginia.

Q. As to the La Salle, Illinois mill?

A. That covers Illinois, western part of Indiana, Wisconsin, Iowa, and a little bit of Minnesota, but not much.

Q. What is the territory normally served by your mill in Missouri?

A. The State of Missouri, the western part of Tennessee, the western part of Kentucky, the southern part of Illinois, and parts of Arkansas.

Q. Now, will you tell us, finally, about the territory served by your Phoenix mill at Birmingham, Alabama?

A. Yes, that is the states of North Carolina and South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and the southern part of Tennessee.

Q. Your method of selling today is that your sales are made at destination prices?

A. Almost entirely so.

Q. You say, "almost entirely so," do you make any exceptions?

A. We have quoted some mill prices very recently.

Q. Under what circumstances?

23043 A. Where the Government has requested prices f. o. b. destination, and f. o. b. mill, and the Alpha Portland Cement Company have quoted on such inquiries under a clause, which was brought out by the Department of Agriculture. Now, that is in our sales to them. That is not our general method of quoting, but we have tried that out in a few cases recently, because it was brought out in December, 1938, by the Department of Agriculture. Since that time we have used it on several quotations to the Government.

Q. Are there any other exceptions, Mr. Coogan, prior to that time when you quoted to the Government?

A. Well, how far back?

Q. I was just wondering if there were any other exceptions other than these Government prices?

A. Do you mean recently?

Q. Prior to 1938.

A. Back in the early days of the industry, we quoted mill prices and we quoted delivery prices and we had several different ways of quoting when we first started in the business.

Q. Consider—subsequent to that, have you ever quoted any differently to the railroads, if so, how?

A. We have quoted to the railroads almost entirely f. o. b. their tracks, but of course as far as we were
23044 concerned, we figured that that is the destination of that cement because after we deliver to the railroad company we have nothing to say about the destination, therefore we consider the delivery to their tracks as the destination point.

Q. Well, I misunderstood your answer. What would you say as to this—

A. Yes?

Q. Would you say and is it your position that it is your policy to sell commercial business at delivered prices?

A. Entirely so; yes, sir.

Q. For how long has that been so?

A. That has been true for more than twenty-five years.

Q. You mentioned something about, in the early days, some different method. Was it flexible at that time or did you have some set method of selling them?

A. Well, it was quite flexible. Of course, in the real early days, the Alpha Portland Cement Company did not control their own selling. When we first started in business we sold everything through a general sales agent. He did all the selling. We did the billing to the customers that he specified with the privilege on our part, of course, of turning them down for credit reasons if we felt so disposed and he would get a commission on all sales. We had no salesmen. We did not carry on any selling activities except in the way of an extremely limited terri-
23045 tory near our plant which was then only located at Alpha, New Jersey. That continued from 1897 until the end of 1901.

Beginning in 1902, we sold to distributors. Now, when we were selling to the general sales agent, he resold the

cement to distributors with limited territories. One had New England, one New York State, and so forth.

Then, as the new companies came into business, that made a difference and they started selling to these distributors direct, so that it was necessary for our company to discontinue the general sales agent and to go to selling direct to the distributors.

We did that for a time, and then as more new companies came in, they developed the habit of selling directly to the dealer trade so that we again found it necessary to eliminate our distributors. We eliminated most of them at the end of 1902. We then had one or two arrangements which were continued for several years after that. After that time, we sold direct to the dealer and consumer trade as they might request.

Q. Mr. Coogan, during the period that you were selling through your general sales agent that you have just described, how was the cement shipped and billed during that time?

A. When we were selling through the general
23046 sales agent, most of the cement was shipped at the f. o. b. mill price. That was true while we were selling through the distributors in 1902. But immediately we began selling direct to the dealer or consumer trade, we had to keep them posted as to what the cement cost them laid down at destination. Now, in the early days, we did that by quoting a mill price and then stating on our quotation the freight rate per ton or per barrel in either wood or cotton. In the early days, most cement was shipped in barrels of four hundred pounds. Usually, we showed the freight rates per barrel or the—well, we showed the freight rate per barrel whether it was in cotton or whether it was in paper, so they could get the two and add them together and find out the price laid down at their station.

Q. Now, when you commenced selling to distributors, how did you handle the cement?

A. When we sold to distributors, most of the cement was billed direct to the distributors and they paid the freight and then they paid us for the cement and then they in turn rebilled their customers. Now, the distributors in a great many cases did bill their customers at delivered prices because they were familiar with the freight rates and so forth. When we started selling direct to the dealers and consumers, we found they were not so familiar

with the freight rates and therefore we had to begin
23047 showing that on our quotations.

Q. As I understand, you at that time quoted a flat f. o. b. mill price to your general sales agent, and also on your sales to distributors?

A. That is correct, up until the end of 1902.

Q. You mentioned the item of direct sales. Will you explain what you mean by that, what area did you mean you had for direct sales.

A. There was a very small territory around our Alpha, New Jersey, mill, where we reserved the right to sell direct to dealer trade even during the time that we had a general sales agent. That was just a few places right around the mill where we sold direct.

Q. What percentage of your total sales?

A. It was probably less than one per cent, certainly much less than one per cent, I should say.

Q. Now, did the elimination of a general sales agent which you have already described, and the final elimination of the distributors have any effect on the matter of freight rates in your prices?

A. Oh, yes, after we eliminated the distributor and general sales agent, information about freight rates became a very important factor in our customers contact because our customers wanted the information so
23048 that they could figure what the price was laid down at their destination.

Q. You gave us the changes which were made?

A. Yes.

Q. Were there any other circumstances which led to the changes which you have not told us about?

A. Do you mean a change from the mill price to a delivered price?

Q. Yes.

A. There was. Immediately after the year 1902, we began quoting more or less in accordance with the wishes of our customers. In addition to these freight rates, some of our customers wanted the price laid down at destination. In those cases, we quoted them delivered prices. Some contractors who were figuring on jobs wanted to know the price of cement delivered on a car alongside the jobs. In those cases, we quoted f. o. b. destination.

In some cases, in a few cases, and for a few, very few

years we still continued quoting some mill prices but at the same time showing the freight rates effective to the point where the cement was finally destined.

23050 Q. Mr. Coogan, today how do you determine the delivered prices which you quote?

A. We determine our delivered prices by the use of certain mill base prices plus the freight rates to the particular destination using the lowest combination of mill base and freight rates which we arrived at, at that particular destination.

Q. Does your particular company use basing points in calculating your delivered prices, if so, will you tell us to what extent?

A. We do. We use basing points. We use them almost entirely, in fact, almost entirely. There are some few exceptions where you might have, as has been the case in the past years, where, in order to meet foreign competi-

23051 tion there have been, what I call, "arbitrary prices" in certain sections. You will find that once in a while, in order to meet a local competition, or local competitive situation, there are some prices which are not based on some of the mill bases plus freight rates, but, generally speaking, all of our destination prices today are made up on the bases of mill bases plus freight rates to destination.

Q. Will you describe your own mill bases.

A. I will describe the way in which mill bases which we use for that makes the list price at that particular destination, but if we find that the mill price being used by another company, plus their freight rate makes a lower price at their destination, we use that mill price or mill base.

Q. That is, do you do that to meet the competitive price?

A. Yes, sir.

Q. Just explain the method you do use and your purposes, and the circumstances surrounding your using

23052 of it, if that would help the situation.

A. Of course, the Alpha Portland Cement Company always means to quote a price at every destination where we quote which is at least equal to the lowest price quoted by any other competitor at that destination and if we succeed in doing that, we feel that that is meeting competition.

Q. You use the term "basing point," and it has been discussed a great deal. In order that I may ask you further questions about that, may I ask you what you mean when you use the term "basing point"?

A. At our own mills, we have, with one or two exceptions, we have a set price which we feel we would like to get at that particular mill and we use that figure plus our freight rate in arriving at the destination price, which we are quoting unless we find that a mill price of some other mill plus the freight rate from their mill makes a lower price at that destination, in which event we use the lower price.

Q. Are all of your mills basing point mills?

A. No, not all of them, all except two are basing point mills.

Q. Perhaps, I should ask you what is the difference between your basing point mills and your non-basing point mills?

A. Well, at a basing point mill, I think I have just explained to you we use the basing mill price in
23053 arriving at the destination price, while at a non-basing point mill, we simply follow the prices which we find at the various destinations served by that mill.

23054 Q. You have told us about the "basing mills." With respect to your basing mills, do you net any more than the figure which you determine as your base figure?

A. Well, on an individual shipment we may not go that low, we may net more from our basing mills, but on the whole the net return at any of our basing mills, is less than the base that we set at that mill. Now, I might explain how we get a little bit more. We have at our basing mills, and we use the minimum line haul rate as our minimum figure in arriving at our destination price plus the base rate. In other words, we have at some mills a switching territory where there are various switching rates. Now, immediately you get outside of the switching territory, you run into a short haul rate, or line haul rate, rather, so if we tried to set our destination prices on the various switching charges, we would have to feather those prices out to a considerable degree, out in the territory where the line haul is effective, so it seems to us just plain common sense that instead of the lower we use the higher and get

as much money for it as we possibly can. So, in those cases, we use the line haul rate, and where delivery may be made on a switching charge, we net a little more than the figure which we have set as the base at our mill.

23056. Q. Mr. Coogan, when we recessed, we were discussing minimum line haul rates and basing rates, in general. Would you mind referring to one of your mills and tell us how it operates there?

A. Well, at Birmingham, the minimum line haul rate to a point located outside of the Birmingham switching district, amounts to fifteen cents per barrel, whereas the cost for delivering the car within the switching limits of Birmingham may run from something like six dollars or seven dollars a car up to fifteen dollars or twenty dollars a car. Now, in arriving at the price that we quote in Birmingham, we take the base at our mill, plus the minimum line haul rate, which is fifteen cents per barrel, which we quote as a minimum in Birmingham.

Q. That is the per barrel unit rate and not the carload?

A. Fifteen cents is the unit rate per barrel.

By Trial Examiner Norwood:

Q. You mean, that is the per barrel unit rate, and not the carload unit rate?

A. The unit rate is fifteen cents per barrel.

23057. Q. Fifteen cents per barrel what?

A. As the unit rate per barrel.

Q. Twelve cents—what would be the carload rate?

A. A fifteen dollar car would figure, depending upon the size of the car, from six cents to eight cents per barrel.

By Mr. Leisure:

Q. I am not sure that what the record shows is clear, but I think that the Examiner's point was, why do you do this; you have not told us why you do it. You have told us what you have done, but you have not told us why you have done so. Please do that.

A. Our customers located in that switching zone, and those located immediately outside of that switching zone, are in competition with each other. We must, as a matter of necessity, give them both the same price, so that instead of taking the minimum, we take the minimum line haul rate, and apply that so as to give the same price to all of our customers in the same territory.

Q. Mr. Coogan, do you fix any minimum net figures

which any of your mills must use, and at any of your mills below which you will not sell?

A. No, we do not have any minimum figures at any mill. Each case is considered on the particular merits of the case, the markets involved, and it is a matter of
23058 executive discretion as to what price we will quote on any particular job.

Q. I notice that some of your mills were basing mills; have you discovered that some of your competitors have made some of their mills basing mills, also?

A. We have discovered quite a number of them are basing mills, or at least destination prices seem to fit the pattern of a basing mill plus the freight rate.

Q. You say, "some of them seem to fit", how do you determine that?

A. Well, it is very easy to determine. The price of cement in any market is no secret. Anybody can learn the price of cement. If you get the price of cement in individual markets, you can easily figure back the pattern on which these prices have been made. We do that, if we find any change we get that information almost immediately. Certainly, not over one hour after competitive quotations are in the field, either advances in prices or declines in prices, it is transmitted to us either through our salesmen or in some cases direct from the dealers to our home office, and we are in constant touch with our customers, and with our field men, and we are certainly kept fully advised of any changes. Now, we—when we find these changes and we get enough of them which indicate how the figure has been arrived at, then we immediately, as soon as possible after that, send out our quotations usually on the
23059 same basis as the then destination price being made by our competitors.

Q. Is that part of your regular work, to find out what your competitors are doing in that respect?

A. Oh, yes, that is regular routine matter and it happens every day.

Q. Do you use basing points other than your own? A moment ago, we asked you whether you were talking about basing points from your own mills; do you use basing points other than your own, in quoting prices?

Trial Examiner Norwood: He did explain that before.

The Witness: Yes, sir. We use basing points other than our own mills. I think I have already explained that.

By Mr. Leisure:

Q. As to the non-basing mills, you have covered that also?

A. I have covered the two mills which we do not use as basing mills.

Q. How long have you used the method of quoting which you have just described since recess?

A. Well, we have used that method since about 1910. Now, you might have a few exceptions between 1910 and 1912, but shortly after that it became absolutely a routine matter and we have used it, I think it was used by
23060 us in every case with certain variations. We, of course, well, the variations were that we had different methods of quoting to different classes of trade during that period, but so far as the method of making up our prices is concerned, that is the way we have been making them certainly since 1912 and probably since 1910.

Q. More than twenty-five years, then?

A. Yes, sir. More than twenty-five years.

Q. Then, do you know, Mr. Coogan, when as you have stated you meet these prices that you have described; do you know that your competitors will not quote a lower price?

A. We do not. I do not know what the competitor will quote. The only thing I know is what he has quoted in the past. We make our prices in an endeavor to meet the last lowest price at that particular destination. We do not always succeed.

23061 Q. Then, Mr. Coogan, are there any places where you sell your cement at a price which is lower than the lowest combination of basing point plus freight rate?

A. Yes. There are some such points. If I may take an example, take Brooklyn, New York. You have a freight rate of forty-two cents and you have building material dealer yards located on the waterfront which get this forty-two cent rate from the Lehigh Valley. Now, on the other hand, there are dealers located in the interior of Brooklyn, who are competing with dealers on the waterfront, but the freight rate to the interior building material yard is something like fifty-nine cents per barrel.

Now, you have got quite a situation. You have got to quote all of those dealers at the same price, and, unfortunately, we have been forced to name them the lowest price because our competitors named them the lowest price.

therefore on the shipments to the interior yards, we have to shrink the difference between the freight rate to the interior yards and the freight rate to the waterfront yard.

Q. Are there many such occasions, Mr. Coogan,
23062 or is that just a few?

A. Well, there are a number of customers involved there. To show what effect it has, it does not stop there. For example, we cannot extend that price to the interior yards to Brooklyn only; because those interior yards are competing with yards located in the next county in Long Island. You cannot suddenly stop off from the price, from a price like that, and use freight rate, so you have got to taper out your prices in order to make those various dealers more nearly competitive.

Now, we try to give all of the dealers the same price who are in competition with each other.

23063 The witness identified Resp. Ex. 432 as an Alpha mill price quotation, dated January 20, 1903, on cement to be shipped to Mahanoy City, Pennsylvania.

The witness identified Resp. Ex. 433 as an Alpha quotation, dated July 2, 1903; Resp. Ex. 434 as an Alpha quotation, dated September 30, 1903; Resp. Ex. 435 as an original invoice dated May 6, 1904 for a carload of cement shipped to Dover, New Jersey; Resp. Ex. 436 as an
23065 Alpha quotation dated May 22, 1905; Resp. Ex. 437 as a mimeographed quotation form dated June 30, 1908; Resp. Ex. 438 as a quotation form, without date, used by Alpha in 1905; Resp. Ex. 439 as a quotation form used by Alpha in 1909; Resp. Ex. 440 as a quotation form used by Alpha in 1910; Resp. Ex. 441 as a quotation form used by Alpha in 1910; Resp. Ex. 442 as a quotation form used by Alpha in 1910; Resp. Ex. 443 as a quotation form used by Alpha in 1910; Resp. Ex. 444 as a quotation form
23066 used by Alpha in 1910; Resp. Ex. 445 as a quotation form used by Alpha in 1910; Resp. Ex. 446 as a quotation form used by Alpha some time between 1910 and 1912; Resp. Ex. 447 as a quotation form used by Alpha some time between 1910 and 1912; Resp. Ex. 448 as a quotation form used by Alpha some time between 1910 and 1912; Resp. Ex. 449 as a quotation form used by Alpha some time between 1910 and 1912; Resp. Ex. 450 as a quotation form used by Alpha some time between 1910 and 1912.

Q. Now, is it correct to say that all of these exhibits,

excluding the invoice, or rather, including the invoice, were forms used by your company?

23067 A. They are.

Q. Do these invoices and the quotations show the method of quoting and billing customers of the Alpha Portland Cement Company during that period?

A. Yes, sir, the invoice which is Respondents' Exhibit No. 435 for identification shows beyond any question the shipment was billed at a delivered price laid down at the dealer's station. It was returned to us by one of our customers as a memento in later years.

Q. I am coming to the details later. At the moment, Mr. Coogan, will you just explain the method used in quoting the customer during the period that you have mentioned?

A. Well, these forms indicate that the Alpha Portland Cement Company, during that period, quoted some mill prices, showing freight rates to the various destinations and they also quoted destination prices during that same period.

Q. Well, at the end of the period of time, were you quoting more destination prices or more f. o. b. mill prices?

A. By the end of that time, we were quoting more destination prices.

Q. And the tendency was in the direction of destination prices?

A. Undoubtedly was in 1912.

23068 A. In 1903, generally speaking, we quoted mill prices and showed on our quoted forms, or rather on our quotation forms, the freight rates per barrel applying to that destination. However, some customers even at that time insisted on having the prices laid down at their station and when we found such people, we quoted them in that manner.

Q. What was the method with respect to the amount of freight involved?

A. Sir?

Q. What were your provisions with respect to that?

A. Well, of course, on the mill prices—

23069 Q. On the quotation.

A. Well, except that the quotations, if they were quoted on the mill prices, they stated what the freight rate was to that destination.

Q. I see.

A. If they were made on delivery prices, then it was filled in just as a matter of information, but of course was not used because when we quoted at a delivery price, we also billed at a delivery price, and then the customer was allowed to return—the customer was allowed to deduct the freight and return the freight bill as a part of the payment of the invoice.

Q. What was the purpose of stating the freight? Why did you use that method of stating the freight rate?

A. Why?

Q. Yes. Why did you use that method of stating the freight rate?

A. Because our customers wanted that information so that they could figure the prices of cement delivered at their destination.

Q. Now, I notice that on these exhibits, take for example Respondents' Exhibit No. 433 for identification, we have a quotation f. o. b. destination, and on Respondents' Exhibit No. 434 for identification and Respondents' Exhibit No. 432 for identification, we have an exhibit 23070 having a place for showing the f. o. b. mill price.

First, just look at it and see if I made a mistake or if this is a correct statement of the situation. Kindly quote the period, from the exhibits, Mr. Coogan, and see if you can tell us any reason for this different quoting method in that case.

A. Well, our method of quoting at that time, even during 1903, we were still selling some cement through some distributors. Most of our distributors arrangements ended in 1902. As I have said, for several years after that we had a policy of quoting either way, either a mill price or a delivery price. We quoted usually in accordance with the requests of our customers.

Q. You have not told us how the matter of payment of transportation charges was handled at this time.

A. No?

Q. Tell us now.

A. When we quoted and sold at a mill price, the matter of freight charges was not involved except as a matter of information for our customers, but when we sold on a delivered or destination price, we billed our customer at the destination price and allowed him to send the freight bill in as part payment of that invoice. Now, I might say it caused us considerable trouble, that method of billing to

our customers, and we had a great deal of trouble in first
getting them to make a proper deduction, and sec-
23071 ond, to get them to send in the freight bills, and the
result was that there was almost endless correspondence going back and forth between our dealers and ourselves, and in fact some cases, or in many cases, we have had dealers pay the full amount of the invoice without any deduction of freight. We found that, and that necessitated our taking the matter up with them in order to see that they got the proper refund.

Q. Did that bring about any change as to your own methods, then?

A. Well, it did, eventually, have an effect, of course. We used to fill out, even when we quoted a destination price in 1912, and we—when we billed the cement on a destination price, we adopted that policy of billing for the total price and permitting them to deduct the freight and send in the freight bill for credit on the amount due.

Now, as I told you, it caused us no end of trouble, and as the company got larger of course that trouble multiplied, so we gradually worked into the system of dealing and billing at a delivered price and carrying the notation that the freight was to be paid by the buyer for the account of the seller, and then deduct the amount of freight from the face of the invoice and the dealer paying us the net amount.

Q. You mentioned one of those papers, Respondents'
Exhibit No. 435 for identification, as being an in-
23072 voice, not as being a quotation. Do you recall that
was Respondents' Exhibit No. 435 for identification? I think that it was an invoice that you used in 1904.

A. Yes. This is not a quotation. This is an original invoice returned to us by one of our customers.

Q. Yes?

A. And is rendered in the manner I told you about the delivered price and these other things, and they are in writing here.

Q. Aside from the paper, Respondents' Exhibit No. 435 for identification, can you tell us what method you used at that time in that transaction?

A. Well, when we quoted a delivered price, which included the freight in with the price, we billed the full amount. When we quoted the mill price, we had nothing to do with the freight except to tell our customer how much the freight was, for his information.

Q. The next exhibit which comes up in chronological order, you mentioned, was a quotation you used in 1905?

A. Yes.

Q. Was that f. o. b. mill quotation, or f. o. b. delivered quotation?

A. 1905, this particular quotation is a price f. o. b. mill, with the freight rate.

23073 (RESP. EXS. 432 to 450 inclusive were offered and received in evidence.)

Q. Take the one of May 22, 1905, being Respondents' Exhibit No. 436 in evidence, at that period of time was it your practice to show the amount of freight on the quotations?

A. It was, and it is so shown in this invoice, or on this quotation.

Q. Was the cement actually shipped in barrels in those days, or by some other means?

A. Well, at that time there was still considerable cement shipped in wooden barrels, weighing four hundred pounds each. This quotation quotes a price in

23074 there, in either wood, cotton, or paper. Today, there is no cement that moves in wooden barrels. We still retain the barrel as the unit of measure, but so far as our own companies are concerned, we do not ship any cement in wooden barrels. It is all in cotton or paper bags. There is some company or companies that might ship a few wooden barrels in export business, but I doubt very much —I doubt it very much. Even that is mostly shipped in paper bags.

Q. What is the number of that exhibit that you have in your hand?

A. Respondents' Exhibit No. 436 in evidence.

Q. You stated in respect of Respondents' Exhibit No. 436 in evidence that it was a form of quotation for the selling price f. o. b. mill?

A. Yes, sir.

Q. Among these papers which you have already examined, are there any other quotations which provide solely for an f. o. b. mill price? I hand you them now, Mr. Coogan.

A. Yes. Respondents' Exhibit No. 432 provised for a mill price.

Q. What is the date?

A. January 20, 1903 provides only for a mill price, but also states the freight rates.

Q. In there?

A. Respondents' Exhibit No. 433, also, and that
23075 is dated July 2, 1903, that provides for either a price delivered at destination or at the mill. In that particular exhibit mentioned, it quotes a price at destination.

Q. Any other?

A. Respondents' Exhibit No. 434 provides for a price either at mill or at destination as may be stated in the quotation form. The date of it is September 30, 1903.

Q. Any others?

A. The next is an invoice as already stated and has already been explained.

Q. Mr. Coogan, I did not make my self clear in my question: I wanted to know whether any of them other than the one you have already designated, provided solely for f. o. b. mill price? To save time, will you look at Respondents' Exhibit No. 448 in evidence, and tell us whether any others have a similar provision?

A. Well, Respondents' Exhibit No. 448 provided for either a delivered price or a mill price.

Q. Yes.

A. Respondents' Exhibit No. 449, according to this form, provides for a mill price.

Q. Will you look further?

A. Yes, sir.

Q. What date, what date was that one which you have, if you know?

23076 A. I cannot tell. We used that one around 1910. I would say that was one of the 1910's.

Q. How do you arrive at that date?

A. By the fact that it was in use and not in use until after we had purchased the Manheim mill and I state that I am able to set that by the capacity as stated on our printed forms.

Q. So that Respondents' Exhibit No. 449, that we have been discussing, is the only form that you used at that time?

A. That is the only form that provides for the mill price other than the other one that I referred to. The others provided for, or can be used for either destination or mill price.

Answering your question now, we used at times different kinds of quotation forms for different classes of cus-

tomers, and you will find in some cases that these quotations were used at the same time for quoting different classes of customers.

Q. Even quite aside from the papers, were you quoting exclusively f. o. b. mill prices at that time, or were you not?

A. Oh, no. We were not quoting f. o. b. mill prices, the tendency right from 1903 was either delivered prices or—well, it was toward delivered prices, very strongly toward delivered prices right along, and as I told
23077 you, by the time this series ran out, we were quoting almost entirely destination prices.

Q. Now, with respect to Respondents' Exhibit No. 449, is there any provision on that quotation form with respect to freight involved in that shipment?

A. Respondents' Exhibit No. 449 provides a space to show to our customer what the freight rate from our mill was in dollars and cents per pound as well as per barrel in wood, cotton, and paper.

Q. Does this series of quotations represent all of the quotation forms used by the Alpha Portland Cement Company from the time you started using them in 1903 to 1914?

A. Well, I think 1912, I think this series ran up to 1912 and so far as I am able to find those are the regular quotation forms and this represents a complete set of the quotation forms used by us during that period.

Q. I think you have told us that Respondents' Exhibit No. 449 in evidence is the only one that uses the f. o. b. mill quotation, solely. Have I got that number correctly? That is, after 1905.

A. Yes. I think that is the only one, and even that, while it bears a notation "f. o. b. cars" or "works" I have seen quotations on like forms as that quoting destination prices by simply stating the name of destination above the price and then, I might say, this is very often done,
23078 and I have no doubt it was simply a form that was used but no doubt it was used to quote destination prices as well, by, as I say, simply stating the name of the destination above price.

Q. Can you tell us whether Respondents' Exhibits Nos. 446, 447, 448, and 450, were in use by the Alpha Portland Cement Company at the same time as Respondents' Exhibit No. 449, or were they used at different times?

A. Will you repeat that, please, sir?

Q. Respondents' Exhibits Nos. 446, 447, No. 448, and No. 450; I was interested in knowing whether or not those were used by you at the same time you used this other form you were telling us about; namely, Respondents' Exhibit No. 449, or were they used at different periods?

A. No, they were used at the same time which is shown by the capacity used on the heading, as well as the location of the mills.

Q. Did you attempt to, or was it your practice during that period of time to show on these quotations anything with respect to prices you were quoting? I mean, of course, the kind of prices that you were quoting at that time?

A. No, except the price in and of itself showed whether we were quoting mill prices or destination prices.

Q. Then, you mean the quotation shows in and of itself, what?

23079 A. Whether it is a mill price or whether it is a destination price, yes, that is correct.

Q. Whether it was one or the other. Was there a practice by your company, during that period of time, Mr. Coogan, to show anything with respect to the freight rates invoiced on any of these forms?

A. Well, all of the forms.

Q. Say, from 1910 to 1912?

A. They did not—Respondents' Exhibits Nos. 447, 448, and No. 450, did not mention what the freight rate is because those quotation forms were used exclusively to quote destination prices, therefore they—there would be no need to mention the freight rates.

Q. Now, will you address your attention to Respondents' Exhibit No. 438, and tell us what your practice was at that time with respect to the method you used in quoting?

A. Well, this is a form that could be used for quotation either f. o. b. mill or f. o. b. destination. It was—

Q. Have you fixed the date, Mr. Coogan, with respect to Respondents' Exhibit No. 438, as to what your practices were at that time?

A. Well, Respondents' Exhibit No. 438 was used
23080 about, as near as I can tell you, about 1905. This is a quotation form which was used in quoting delivered prices and there is no mention of freight made on that particular form.

Q. Now, using that—keeping that form in your hand,

will you tell us whether or not Respondents' Exhibit No. 437 was used during or about that time, or was it used before or after that time; just give us the period in which it was used.

The Witness: Respondents' Exhibit No. 437 was a quotation form used during 1908. As a matter of fact, this is a part of a quotation which had been made to a customer covering cement delivered at two or three different places. It bears the notation to see the list for prices which discloses the fact that there were a list of delivered prices attached to that quotation.

By Mr. Leisure:

23081 Q. What I wanted to get, Mr. Coogan, was; I did not make myself clear; whether or not they were both used at or about the same time or whether they were used at different times?

A. Why, we used them at or about the same time.

Q. Now, you have used two different dates, 1905 and 1908; do I understand by that that they were used during the interim, or only during those specific years?

A. They were used between that period, we did not change our quotation forms every year. Our forms remained the same except when we changed our policies and then we had new forms printed, so we used two forms either one or both while we were doing business from 1905 to 1908, in those early days, and as a matter of fact, this is only a mimeographed form and was probably in use for several years even before this one particular form was used.

Q. Now, with respect to Respondents' Exhibit No. 437, what was your practice during that period of time in connection with that method of quoting?

A. Well, as I said, this is a mimeographed form and was evidently gotten up for the special purpose of quoting on a specification which required delivery to several different points because the form which I have bears a notation, "See list for prices" so that is one of the mimeographed forms which was used in that particular
23082 case in connection with the list of prices delivered to whatever destinations were called for.

Q. I think you have already told us that it provided for quotation f. o. b. cars at your plant?

A. It provides for that, but evidently was not used for that in this particular case,—

Q. That is what I was asking you about, and that is the reason I was asking you about your practice at that time, Mr. Coogan.

A. —Because it shows plainly that it is on a quantity of five thousand barrels and it is open for acceptance until July 31, and that this list of prices was attached to this, but they were delivered prices and not mill prices.

Q. Now, will you look at Respondents' Exhibits Nos. 439, No. 440, and No. 441, in evidence.

A. Yes, sir.

Q. Will you tell us what that method of pricing was at that time of your company?

A. Well, these quotation forms show very plainly that at that time we were quoting destination prices by the use of these forms.

Respondents' Exhibit No. 439 provides strictly for destination prices because it says, "f. o. b. cars your city."

Q. What about Respondents' Exhibit No. 440, Mr. Coogan, please?

23083 A. Respondents' Exhibit No. 440 in evidence is a form that calls for f.o.b. carlots, f.o.b. cars, at any destination which we may write into the quotation form and was used if we quoted a customer at a station other than his own, so we would write in the station, or we would write in on Respondents' Exhibit No. 441, which calls for the price f.o.b. the destination of the dealer quoted. Those were those two.

Q. Those you have already told us were used in 1909 and 1910?

A. Yes, sir.

Q. Let me see one of your more recent ones, and one of the earlier ones.

A. Yes, sir.

Q. May I have one of the earlier ones?

A. These are the early ones here.

Q. Thank you. I notice there appears to be some change in your cash discount terms as is shown by this series of quotations so far.

A. Yes?

23085 Q. Now, starting again with 1909, up to that time, was it your practice or did you come to any set policy with respect to the payment of freight charges?

A. Up to 1909?

Q. Yes. You have Respondents' Exhibits No. 439, and

440, Respondents' Exhibit, which you told us about up to 1909?

A. No, at that time when we sold on a delivered
23086 price, we billed at the delivered price and gave the customer the privilege of deducting the freight, as I remember, at that time.

Q. Just to refresh my recollection, do you mind telling me as to Respondents' Exhibit No. 442, and Respondents' Exhibit No. 443, what period they covered?

A. Respondents' Exhibit No. 442 and Respondents' Exhibit No. 443 covered 1910.

Q. Did you have any policy with respect to the risk as to who bore the risk of damage in transit during that period?

A. No, these quotation forms did not provide for any exception as to that damage; in other words, at this particular time we did not disclaim any responsibility as to damage in transit.

Q. What is your policy today, Mr. Coogan?

A. It is the same thing today. We do not disclaim liability for any damages in transit. That is one thing that has not before always been so in the interim. There have been times when we, on our printed forms of quotation and contracts, where we disclaimed responsibility, but as a matter of fact, there has been no case when we have refused to allow such claims and make our own claims on
the railroad company, or if it was something for
23087 which we were responsible, we stand it ourself. In other words, we found it was not a practical, commercial, thing to do. We would have endless fights with our customers in attempting to enforce such a provision; so, while our forms for a time bore such a disclaimer, it was never actually put into force.

Q. I think you told us that Rsepondents' Exhibit No. 444 and Respondents' Exhibit No. 445 were used at approximately the same time in 1910; is that correct?

A. They were used in about 1910, both of these.

The witness identified Resp. Exs. 451 to 454, inclusive, as quotation forms used by the Catskill Cement Company,
which was maintained as a separate corporation un-
23088 til 1917. These forms, which bear no dates were in use prior to 1912 at the same time similar quotations were used by Alpha. Resp. Ex. 454 is a quotation that was used contemporaneously with Resp. Ex. 453. One quota-

tion form was used for quoting a dealer and the
23089 other was used for quoting a dealer on a specific job.

The witness identified Resp. Ex. 452 as a quotation form used for quoting direct to a customer on a specific job, and containing space for the acceptance on the form. Up to 1912, perhaps a little bit longer, Alpha continued to use forms similar to Resp. Ex. 442 and Resp. Ex. 445.

The Witness: I think I have covered the forms that were used up to about 1912, but these might have been in use a few months or a year beyond that date.

23090 (RESP. EXS. 451, 452, 453, and 454 were offered and received in evidence.)

23091 New York, New York,
September 13, 1939.

23092 Trial Examiner Norwood: The hearing will come to order. Pursuant to adjournment on yesterday, the hearing in Docket No. 3167, is now reconvened at 9:00 o'clock, a. m., Eastern Standard Time on September 13, 1939, in Room 1105, United States Court House Building, Foley Square, New York, New York.

Mr. F. M. Coogan is recalled for further direct examination. However, before we proceed to that, in regard to Respondents' proffer of Respondents' Exhibit No. 425-A to 425-L for identification, I shall overrule the objection, in part, and receive such portions of that exhibit as has not already been received as Commission's Exhibit No. 1175, as appear to explain or modify the parts already received; that is, Paragraph 4, on page lettered C, and part of Paragraph 3 and 4 on page lettered K. The exhibit is received as Respondents' Exhibit 425 consisting of the title page A, and the other lettered pages I, J, K, and the first paragraph on the page lettered L; that is, such portions of those pages on the pages and paragraphs designated as go to modify or explain Commission's Exhibit contained in this pamphlet.

23096 E. M. COOGAN resumed the stand and testified further as follows:

Direct Examination by Mr. Leisure.

Q. Mr. Coogan, when we adjourned last night, you had testified that the development of the use of delivered prices by your company occurred during certain periods. I think you gave 1902 to 1912. I am not sure that you stated the circumstances surrounding the factors as to the development of the delivered price.

I would like to take that up this morning.

A. Do you mean what caused this development?

Q. Yes.

A. Well, there were three principal contributing factors. The first one, perhaps, the building up of new competition in other sections of the country. The change in the method of marketing cement; that is, the evolution from the getting away from the general sales agent to the distributor, and from the distributor and selling direct to the dealer and consumer trade was second; and last, perhaps, one of the most important factors, the third one, was the customers' demand for knowing what the cement was costing him and what it was going to cost him laid down

23097 at his particular destination.

Q. From what point of shipment did you figure freight when you were showing the freight on your quotations during this period?

A. We figured that freight from the mill from which it was shipped. Of course, in the time that we were using that form, there was practically only one basing point because as soon as we started using some basing point, we naturally went almost entirely to delivered price and after we quoted a delivered price, there was no longer any reason for showing on our quotation forms the freight rate.

Q. And what was that basing point?

A. That was the Lehigh Valley in those days.

Q. Now, what was the rate quoted from, was it quoted from Northampton or from some other point from where you shipped something?

A. Generally speaking, the rates from the Lehigh Val-

ley group were blanketed as to point of origin and as to point of destination, except too, perhaps a few, and a very few strictly local points where the freight rates from different mills in Lehigh Valley might differ, but they were not large consuming points, and so far as our company was concerned, we used on our quotations, Northampton rates because then we figured what the center of the group was and instead of rates for that particular point,
23098 inasmuch as rates, for the most part, were the same, we simply used one rate in figuring our prices out of the Lehigh Valley.

Q. Does that mean that rates from Northampton would be similar or would be the same or in the same group, or not the same as your rates from Alpha, New Jersey, and from Martins Creek, Pennsylvania; for instance, Mr. Coogan?

A. It would be exactly the same to all but a few local points where there was a little or no cement consumption, and in quoting to those points, we also used rates from Northampton.

Q. Now, you said that you used the Lehigh Valley as the basing point.

A. Yes.

Q. At that time, Mr. Coogan, say, 1900 to 1905, was there any considerable amount of cement produced any other place in the Lehigh Valley than at the point you have mentioned?

A. No, there was not much cement produced except in the Lehigh Valley. Now, of course, we did not—we were not using any fixed policy as early as 1902-1905,
23099 this was that period, and during that period we did quote some mill prices and we used the Lehigh Valley as a basing point later on; the use of the Lehigh Valley as a basing point was not in use by us until some time along about 1910 or 1911.

Q. Now, coming down to the time when you acquired the mills at Martins Creek, did you use any other base for figuring prices?

A. Of course, we acquired those mills in 1902. At that time we were still—

Q. What you have said, then, applies to those mills?

A. Yes, what we have—it would be the same situation.

Q. Yes.

A. At that time we were still carrying on at the same proposition and in the same way, one of these was acquired in 1902 and the other was acquired a little later.

Q. What about Manheim?

A. Manheim was acquired in 1909. There, we tried as soon as we could, to meet the prices that were being quoted by our competitors, and which were being quoted in the Central West, particularly in Ohio, in middle Kentucky, and that general area. We found these people basing their prices on the Lehigh Valley, plus the freight rate. We quoted on their basis and tried to meet their prices as best we could.

23100 Q. Mr. Coogan, during the early 1900's, what was the situation as to delivered cost to the purchaser
23101 from the Lehigh Valley, if you know?

A. Well, during the early 1900's, we used both pricing methods. That is, we quoted sometimes a mill price and at other times we quoted a destination price, and when we quoted a destination price, we used the Lehigh Valley rate as the base and quoted the price at destination plus freight rate from the Lehigh Valley.

Q. Now, you told me that subsequent to that time, new mills were established west of the Lehigh Valley.

A. Yes, sir.

Q. What was the situation with regard to delivered cost to the purchaser at that time?

A. When new mills were first established, according to my recollection, they began making prices on Lehigh Valley base, plus the freight rate from the Lehigh Valley and quoted that as their destination price, and so we tried to quote the same price.

Q. What was the first mill established in Lehigh Valley?

A. Well,—

Q. (Interposing) I mean, west of Lehigh Valley, excuse me.

What was the first mill established west of Lehigh Valley?

A. I am not sure whether it was the old plant of the Illinois Steel near Chicago, or whether it was the Hannibal plant.

23102 I am not sure which one was the first, but I think it was either one of those two.

Q. Did the establishing of those new mills affect your

price in any way—I mean, were you able to get your cement in that territory near those mills—what was the situation after these mills were established?

A. Well, when those mills were established, there was some prejudice against their products. That is, at the time a great many people thought that the best cement was made in Lehigh Valley, and they ran into some prejudice, the same as eastern manufacturers ran into west imported cement when they first started business, and for a time we were not much worried about shipping our cement into that market and we didn't always have to meet the prices being quoted by our competitors to the West.

In other words, there was a feeling that Lehigh Valley cement was perhaps a little better, and that was particularly true of the Illinois Cement Company because their products were slag cement, and there was a prejudice—there was a strong prejudice against it, against slag cement.

However, that has been eliminated today, and gradually that matter of brand preference ran out and as time went on, we were compelled to meet the price competition of the companies manufacturing in that district.

Q. Now, as to this prejudice, at the beginning 23103 did that affect your price in any way, though you were able to sell your cement at a higher or lower price?

A. Of course the advent of these mills into that territory had a gradual effect in lowering our prices and it also gradually affected our tonnage, but for a while we were able to continue a pretty fair business in that territory.

Q. Now, I am not clear. I said, "higher or lower" and from your answer I am not clear.

Were you able to sell your cement at a higher or lower price in that territory for a while?

A. Higher than their prices?

Q. Yes.

A. Yes, we did, for a time. We sold our cement in that market at higher prices than were being quoted by our western competitors, because there was a prejudice against the newer cement.

Q. That was what I thought you said, that there was a prejudice, but I didn't know how that affected your business.

Can you tell us then, whether the establishment of these mills at the outset had any effect upon the method in which you quoted prices in that territory?

A. Of course, in order to meet the competition of these new mills as they started in, they began quoting for the most part delivered prices, and while we had sold in that territory previously on mill prices, after they started
23104 up, we were soon compelled to quote delivered prices so that a customer could compare the cost of the two cements.

Q. How did that affect your prices, as to whether they became higher or lower?

A. It had a tendency to bring our prices a little lower, because the new mills, in figuring for a while, used Lehigh Valley freight rates in arriving at their destination prices. As the mills became more numerous, they began to use basing points of their own, which of course lessened freight rates and had a tendency to reduce the delivered price to the customer.

Q. How did that affect your net at the mill?

A. It naturally had a downward effect on our net—on the net for our cement which we shipped into that territory.

Q. Now as to this prejudice, did that continue, or did there come a time when you were not able to command this preference you have mentioned?

A. That continued for a time, it continued for a time, but I should say that by the year 1912, that it had been almost entirely eliminated. While there might be a case here and there where there was some brand preference, by far and large, subsequent to 1912 or 1914, there was little or no brand preference which would command a higher price.

Q. Then, Mr. Coogan, did you find that in most cases you had to meet the price quoted by these western mills,
23105 or were you able to sell at a different price?

A. As I stated, in some cases we were able to get a little preference, that was for some few yeaers, but as I said, from about 1912 on, we were compelled to meet new prices quoted by our new competitors in the Middle West.

Q. What was the demand at that time with reference to the capacity produced by these new mills?

A. At that time there was a growing demand for cement, and there was a market in the Middle West for more

and more cement. There was a market for more cement than was manufactured in that district at that time, and we were able to, at times, ship cement in there at a little higher price, both on account of the demand and on account of the brand preference.

Q. And did this demand have any effect on the prices?

A. Well, naturally, if there was a demand in excess of the ability of the mills there to fill, we did not need to shave our prices quite so close.

Q. Have you testified completely as to the new mills that were established; did that end the establishment of new mills in that territory, or did there come a time when there were others added?

A. They have been added almost constantly up until perhaps the year 1925, I should say.

Of course, they are very numerous in that terri-
23106 tory at the present time, and I have stated the two mills that were among the first, but there have been many others established since that time.

Q. And, at this time—you told us yesterday that there came a time when you were selling almost exclusively at destination prices.

At this time, when these new mills came in, were you selling at destination prices?

A. I have stated from about 1912 or 1914 we were selling practically exclusively at delivered prices in all of our territory.

Q. Now, as to these new mills, did you give any attention as to how they were figuring their prices, Mr. Coogan?

A. Yes, we certainly did. We had to. We have to try to keep in touch with the competitive situation and make every effort to find out how they quote their prices.

Q. And at that time, what did you find out as to that?

A. Well, at first we found out that they were using a price in the Lehigh Valley and adding the Lehigh Valley freight rate, but as more new mills came in, we found there were new basing points being used for figuring delivered prices, and when we found that out, of course, we had to change our method and quote delivered prices competitive with theirs.

Q. About what time, if you can fix the year, when
23107 did you find that your competitors, as well as yourself, were quoting delivered prices almost exclusively as you have just told us, Mr. Coogan?

A. That was about the same time that we started quoting delivered prices. I should say some time after 1910, probably about 1912.

Q. By 1912, were you using or were you not using basing points?

A. Yes, we were using basing points in 1912.

Q. Could you tell us, so that the record will show it clearly, Mr. Coogan, at about what time—let me put it this way—say, in 1915, how many basing points did you recognize, not only of your own company but that you recognized at all?

A. I should say at that time there were probably seven or eight basing points that we were using in making up our delivered prices.

23108 The witness identified Resp. Ex. 455 A-B as a list of the basing points used by Alpha at various times during the past thirty years. The earliest date of this use has been worked up from the records of the company. Some of the bases have been used continnously since they have been started, and others have been used at times, and not at other times. These dates from which Alpha started using these basing points were secured from its records from a historical sketch which it made up along about 1920. Since that time, they are made up from its records, and partly from memory. He does not want this exhibit to be misinterpreted on these dates. He thinks they are correct, but it is possible, however, that on some of the basing points Alpha was using them a little earlier than the date shown on the list. As far as its records went at the time Alpha prepared this list, this was the nearest they could come to it and it is approximately correct. The important thing is that it is the information that

23109 Alpha uses in its business; that is, his best knowledge as to what the basing points were as of that time.

23110 (RESP. EX. 455-A and 455-B was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, referring to Respondents' Exhibit No. 455-A and B, will you state what was the first base you used in computing your prices in addition to the Lehigh Valley base?

A. According to our record, Mitchell, Indiana, and Stroh, Indiana, which we started using in 1912.

Q. Do you know, Mr. Coogan, whether your competitors

were using these bases at the same time that this exhibit shows you commenced to use them?

A. I don't know. I know that we were using them and that is as far as I can be certain.

Q. Were the dates indicated on this exhibit the first times that you used these points as bases?

A. This is the earliest date of record that I could find. As I stated, it is possible that some of the basing points might have been used a little earlier than the dates shown on this exhibit, but I think this is approximately correct.

Q. What is the situation today, are you using all of these bases shown on this list, in making your deliv-
23111 ered prices today?

A. No, we are not. There are a number of basing points on here which have been used at various times and which are not now being used.

Q. Just explain that to us, please.

A. Well, as I said, there are a number of basing points, or were, which while they had been used by us at one time or another, are not being used by us today in making up our destination prices.

Q. What I want are the circumstances for discontinuing any of them, if you did discontinue them?

A. Well, that would be quite difficult to enumerate right now. I happen to know that some of the southern ports were—

Q. (Interposing) Start at the first, say for instance, Jamesville, do you continue to use that?

A. Well, that comes down to a later period. We didn't use it all of the time. We used Jamesville as a base for probably two or three years and then we discontinued it as a base.

Q. Go ahead.

A. Might I go on and state here that in 1916 we were carrying basing points at a number of South Atlantic and Gulf ports, because at that time we shipped our cement
by water to the various ports and shipped it inland
23112 from there because at the time there was not much competition in the southern markets and we were able to handle our cement that way.

As the plants began to grow up in the South, of course we had to drop that method of shipping our cement there, and that method of pricing the cement, because we found the mills there using their own mills as basing points and

we had to meet their prices. Therefore, we started using southern mills as bases instead of southern and Gulf ports.

At times, we were using Texas bases. As a matter of fact, prior to 1920, we shipped cement into the Gulf ports of Texas and made up our prices based on the rates from those ports inland.

I notice here that we used to carry a base at the ports in Maine and shipped inland, because we used to ship our cement up in that territory and reship from the ports inland.

Now there are some other exceptions on here, I don't know whether you want me to point them all out or not—or, that is, all that I see. I will probably overlook some.

Q. Well, I will come back to that again in a moment, Mr. Coogan, let me go on at this time.

Let me call your attention—first I would like to take up the period between 1910 and 1928, and ask you
23113 whether or not your mills have been base mills and the reasons why they have been operated as base mills or non-base; that is, the mills that you acquired between 1910 and 1928?

A. Well, when we acquired the mills between 1910 and 1928,—the first one was Jamesville, which was a very small plant with a capacity of something like 400,000 barrels a year, we didn't make that mill a basing point. We continued quoting our destination prices based on either our Hudson River or Lehigh Valley mills, whichever made the lowest laid down price.

In 1920, we purchased three mills, one located at LaSalle, one at Ironton, and at Bellevue, Michigan.

At the time we purchased them we found the LaSalle mill was already a base. There were other mills located at the same point, the Marquette and Lehigh, and we continued using LaSalle as a basing point to determine destination prices. The other mills were not being considered by the people who were using them as basing points, as our predecessors had been doing.

In 1922, we purchased the mill at Continental, Missouri, and there is also another mill located nearby, right near St. Louis, and we found that they had been using their mill as a base mill and we continued that practice.

Q. The Manheim mill which you said was acquired in 1909, has that mill ever been a basing point?

A. No, sir. It never has.

23114 Q. After you acquired that mill, who determined whether it would be a basing point?

A. Well, the executives of the Alpha company in consultation decided whether we should make that mill a base mill or not.

Q. That being so, will you explain why you didn't make Manheim a base?

A. Well, Manheim is located in a very thinly populated country, and any base we would put in there to reach any marketing area, would have to be a very low base, in fact, lower than we would feel warranted in making.

I think Pittsburgh is about the nearest large consuming territory to that mill, and the difference in the Manheim rate compared to the rates of the other mills serving Pittsburgh, is approximately twenty-five cents per barrel, and as I remember the present base used by the Pittsburgh mills is about $1.55 a barrel, so if we wanted to control any important markets, we would have to name a base price of less than $1.30 at our Manheim mill.

As stated, that was a lower price than we felt warranted in making, and if we made it any higher it would simply be a meaningless gesture and would not control any portion of the market, and therefore we decided the balance was in favor of continuing quoting destination prices as we found them in the field.

Q. Coming back to your Jamesville mill, do you

23115 have any large market near that?

A. Yes, a fairly good market in Syracuse, not particularly a large one, but a fair sized market for a mill of that size.

Q. What is the capacity of that mill?

A. I think between four hundred and four hundred and fifty thousand barrels per year.

Q. Do you have a base there?

A. No, sir. We do not at the present time. We had a base there for about two or three years, and after trying it out and seeing how it worked, we found that it didn't increase the tonnage which we were able to get for that mill because whatever prices we made out of the mill were immediately met by most of our competitors, and the situation was relatively just the same as it was without a base.

Furthermore, unless we put in a base low enough to

meet the prices in Syracuse, it seemed useless to put it in, and if we did that, made the price lower or much lower, it would have the effect to extend the base beyond the territory served by the mill, there has been reduction of net which we might get when shipped in that district, now, we were compelled to ship into that territory because of customer preference, from the mills located in the Lehigh Valley and Hudson River.

Q. Take up the Alsen mill, for example, when did you take that over?

23116 A. We took over the Alsen mill in 1909, but it wasn't merged—

Q. (Interposing) When did you begin to operate it?

A. It was an operating mill at the time we took it over.

Q. Did it ever become a base?

A. Yes. It was not a base at the time we took it over. As a matter of fact, at the time we took it over, we were only using the Lehigh Valley, and our own company put in a base at that mill in the latter part of 1914.

Q. Will you explain the circumstances as to your reasons for putting in a base there?

A. Well, we felt that that mill was located freight-wise to a very important consuming territory. That it provides the advantage of water transportation and it was also in a section where there were several other mills and we felt that with a mill freight wise point located favorably to a large consumer territory and located in a territory where there was a fairly large production, that there should be a base figure used at our mill for making destination prices. Now I might say that when we put in the base at that mill our first attempt we made it ten cents higher than the base which we were using at our Lehigh Valley mill.

Q. You say—what was the reason for that?

A. Because we felt there was at least that much difference in the manufacturing cost at that mill as com-

23117 pared with the Lehigh Valley mills.

That difference in cost was due to several causes. It was principally due to harder grinding rocks, and also to higher freight rate of coal used, and we felt at that time that that ten cents' difference fairly represented the difference in cost.

Q. Well, did the establishing of this base at Alsen affect your delivered price of cement in New York City?

A. No, not at that time. Not in New York City at that

time because there was a novel way of making deliveries into New York City at about that time.

When we purchased the Alsen mill, it had a contract with a very large dealer in New York City, which enabled him to buy his cement at the mill and provide his own water transportation and take care of all that himself, so that we were not very much interested in—we couldn't possibly have that mill meet the price in New York in view of that existing contract.

As a matter of fact, while that contract existed, we couldn't sell any other dealer in New York because they all felt this man had an advantage, and generally speaking, they would not give us their business.

Furthermore, there was a novel way of delivering cement in New York City and vicinity in effect at that time. There
23118 was a very low rate to Jersey City, fifteen or sixteen cents a barrel, and cement was shipped by the Lehigh Valley mills to Jersey City and at that point loaded on trucks and delivered to various points around New York on orders from the dealers.

You take the Lehigh Valley base and add freight rate to Jersey City, plus the trucking rate from Jersey City to various points in and around New York, and it would be lower than the base price at Alsen, plus the water transportation, plus the cost of delivering it to the various destinations from the landing place, so, while that contract existed, of course we could not attempt to make any other prices in New York.

Q. Mr. Coogan, did you—before the recess we were talking about shipments made from Alsen, from the Alsen mill. With reference to this contract you were describing, did you use water transportation to get the cement to New York from your Alsen mill?

23119 A. Under that contract, we sold the cement to that particular dealer at a mill price and he arranged his own transportation, which was by water.

Q. Well, as a matter of actual figures, Mr. Coogan, was the Catskill mill base plus transportation charges to New York, carloads, greater than or less than the Lehigh Valley base to New York City at that time?

A. At that time, due to the method employed of making deliveries in New York City from the Lehigh Valley, the Lehigh Valley base plus the cost of delivery of cement to final destination was less than the ten cent higher base of

Alsen plus the cost of getting it from Alsen to destination, so that the Lehigh Valley base at that time prevailed in New York City.

Q. Did the fact that this water transportation from the Alsen mill was possible or available have any influence upon your acquisition of that mill?

A. Yes. It had some, because we wanted to be in position to keep in business to furnish the territory which might be served from that mill. It was principally purchased as an outlet into New England, because it is located very admirably for that. As a matter of fact, on the method which is employed in New York City here, and which has been in vogue there for some time, it is absolutely impossible to ship cement by water, down the Hudson River to
23120 New York and get any busjness because in shipping in boatload lots, they are large lots, approximately three thousand barrels, some as little as two thousand barrels, and the dealers are no longer willing to take cement in that size lot, the railroads have improved their service to such an extent that they make deliveries the next day and they make it either lighterage or float delivery in carload lots, and whereas, when we first purchased that mill, and after we entered into this contract, we did begin to sell dealers in New York and for a time we were able to sell them in three thousand barrel lots delivered alongside their docks, and they would unload the boats and put the stuff in their warehouse.

Today, so far as dealers in New York are concerned, they make their deliveries direct from railroad lighters or floats, as the case may be, or from cars in railroad yards, if they take such deliveries, so that there is very little chance for us to ship cement in boat loads from the Hudson River to New York City today.

The only place that we use it is on making shipments to Long Island, and to reship from Long Island City by rail into the interior of Long Island.

Now, that does not mean that there is any saving in the cost of handling our business, because the combination cost of getting it to the Long Island City point and then
23121 reshipping, plus the rail rate from Long Island City to destination is just about the same, adds up, and ties up as between that cost and the all-rail cost, and we handle the business in that way simply as a matter of convenience to our customers, because we are able to ship

out of Long Island City that night, and any of them will have the cement the next morning.

We have been forced to do that by some of our competitors by setting up reserves, and we have followed it and find it is successful.

Outside of that particular business, which is a considerable tonnage, I do not believe—I was going to almost say that we have not shipped a boatload of cement to New York City from that mill for the last two or three years, although that is correct, I believe, but there might be a stray buyer by boat, but very, very seldom, we would have a boatload of cement sent down from that mill to New York City in that manner.

Q. When you ship the cement down, it is loaded there and then unloaded here in New York at the dock?

A. That is correct. However, as I say, that is a very unusual thing, and something that we do not do very often.

Q. When you established the business at Alsen, did you, in quoting prices to New York, did you consider whether you would use one form of transportation or the other?

23122 A. We gave consideration to the general picture, of course.

Q. Now, when you established the business at Alsen, did you, in quoting prices to New York, did you consider the water transportation charge in New York, as against the railway?

A. Not at that time. I always refer to them at "bootleg boatmen", they were up and down the river, and it was impossible to get any fixed rate. The rate had to be figured on each individual transaction and there was no way then that we could use that as a guide.

Of course, we were not particularly interested on account of the existing contract at the time we bought it. But until such time as the water rates were more or less stabilized, we did not use water rates in arriving at our destination price in New York City.

Q. When you first started to ship cement from your Ironton mill, how did you figure your prices from that mill?

A. We figured the prices from that mill on the information picked up in the field as to the prices being used by our competitors. As I remember it, the basing points which we made, or which we found being used by our competitors at that time, were Universal, Buffington, and Mitchell. I

think that that controlled practically the territory served by the Ironton Mill; there may have been another basing point that came in partly, but I doubt it.

Q. Did you, or did you not, meet the prices that you found?

23123 A. We did.

Q. Will you fix that, please?

Q. Then, was the pricing at Ironton and nearby surrounding areas governed by that basing point, or some distant mill?

A. There was no base at Ironton at that time, therefore the prices in or around Ironton were quoted on the other basing points that were used, or at least that we used, as price basing points in and around Ironton.

Q. In other words, they were not based on Ironton?

A. No, not when we first started operating that mill.

Q. Were there any other mills at Ironton, Ohio, when you acquired your Ironton, Ohio, mill, Mr. Coogan?

A. No, sir. There was, as I recall, a mill located at Portsmouth, located fifteen or twenty miles away and also at Kenova, West Virginia, which is about the same distance from Ironton.

Q. Were any of those mills basing mills?

A. No, none of those were basing mills at that time, so far as I know.

Q. What was the nearest basing mill, if you have

23124 not already told us?

A. According to my memory, the basing mills, which, generally speaking, were used to make the prices in that territory, were Universal, Mitchell, Indiana, and Buffington.

Q. Did you quote Ironton prices based on any of those points?

A. I think if my memory serves me right, Ironton was based on Universal.

Q. What was the situation when you went West from the Ironton mill?

A. Well, if we went west in the southern part of Indiana, it would seem to be, or probably be based on Mitchell, and if you go into the northeastern part, at that time, it would probably be based on Buffington. That would all depend upon the base price being used at that time. And as I remember it, at that time the base price which we were using at Mitchell was, I think, ten cents a barrel higher

than the base price which we were using at Pittsburgh or Buffington.

Q. Did there ever come a time when you established a base at Ironton?

A. Yes, sir. We established a base at Ironton, I think, in 1925. At that time, there had been a considerable market developed in the southern part of Ohio and we felt that we should make that mill a basing mill. It was one
23125 of the important mills in our chain and we wanted to be in a position to set new prices in that territory, for the time we felt we wanted to do it, so we put in a base at that mill in 1925.

Q. Do you know at what figure you put that in, in 1925?

A. Well, I know the figure we put it in.

Q. What was it?

A. The base figure that we put in at that time was 1.95 stripped of discounts and packages, compared at that time with the base price at Universal and Buffington of 1.75 stripped, and the base at Mitchell of 1.85 stripped.

Q. Did your Ironton base cause any reduction of delivered prices in the territories surrounding that mill?

A. Yes, sir. It did cause some reduction in the nearby points to that mill, frankly, in putting in that price we made it as high as we felt we could make it and still control some territory. We wanted to form a base mill and at the same time we tried to get as much money as we could, and we made the price somewhat higher than either the Universal or Mitchell base, which made prices in the nearby territories rise or fall as the case might be, but did not extend the base as far as if we had adopted the same base that we were using at these other mills; that is, the base that was being used there as I have described before we did that.

Q. Now, Mr. Coogan, you have told us that your
23126 executives determined whether or not a mill is to be a non-base mill or a base mill?

A. Yes.

Q. Did you discuss the matter in anyway with your competitors before you made your Ironton mill a base mill?

A. No, sir. We did not. I have never had any discussion as to whether a mill should be a basing mill or not. I think any mill, large or small, can make itself, or its mill a basing mill or non-basing mill just as he sees fit, and I have never heard any questions raised about it.

Q. My point is, was it a matter which was solely determined by your own company without any outside advice?

A. Entirely so.

Q. Now, as to the result in that territory, suppose you decided not to have Ironton as a base mill, and dropped that base, what would be the result?

A. We would get a little more money for our cement out of that mill, if we were to discontinue it as a base, unless at the same time some other mill located nearby would decide to put in a base, in which event it would depend entirely upon what base price they decided to use. On the whole if there are no other bases established by nearby mills, it would probably increase our return on the cement shipped.

23127 Q. What effect would that have, Mr. Coogan, if you know, on the delivered price in that area?

A. That would make the delivered price in that area somewhat higher.

Q. Mr. Coogan, Commission's Exhibit No. 1189 is the Pennsylvania-Dixie inter-office memoranda which refers to the application of the Ironton base on February 13, 1930. It says here that, "The Ironton base will not be restricted by the Lone Star. This is contrary to the general practice of other southern mills and contrary to the understanding that we have had."

Do you know of any understanding between yourself and any of your competitors that your base at Ironton
23128 should be restricted in any way?

A. I do not. We had no understanding. I do not know what he means as to an understanding. We were using at that time, or about that time, we instituted what we refer to as a duel base at our Ironton plant. I think the records will show that at that time we were quoting a very low price at our Ironton mill. We were quoting a price at Birmingham which was somewhat higher. There came a time when we decided to advance our price at Birmingham, and I think the advance at that time was something like thirty cents, twenty cents or thirty cents, per barrel. Now, that advance at Birmingham of the Birmingham price or Birmingham base, which we were using, had we advanced the Birmingham base which we were using and had not in some way restricted the Ironton

base from running down into that territory, it would have had Ironton making a price in the territory which we were serving from our Birmingham plant. Now, we did not feel—at the time that this Birmingham change was made, we did not feel that the conditions in the southern Ohio area was such that we would want to advance our price at that mill at that time. And instead of doing that, when we got south of Virginia-North Carolina line, we used a higher price—a higher base out of Ironton than we had in quoting the regular territory served by that mill.

23129 Q. Did you, at any time, have any agreement or understanding with any of your competitors as to what you woul or would not do at Ironton?

A. I certainly did not have any understanding or agreement of any kind.

Q. And from what you have said, when you put in that restricted base, as you have described it, did you make any secret as to its application?

A. No, of course, there are a very few secrets in the cement business. It is easy to find out anything that happens. Now, we or any one else who is anxious to find out how a base is being applied, can find out how a base is being applied, where it is being applied, or what it is. We made no secret whatever, and I would not hesitate to tell anybody who asked me what I was doing or what I had done.

Q. Now, from what I understand from what you have said, I take it that this restriction was public, or was it not public?

A. It was public in the sense that it could easily be checked up by your competitors as to how you were applying your price by a little investigation.

Q. Yes?

A. Now, so far as your customers are concerned, they pay little or no attention to what base figures you
23130 are using in arriving at the destination price. They are interested only in the destination price, and that is the only thing that they pay any attention to, so that they would not inquire. But the field men of your competitors would naturally report every price that they might find, and I presume, I know that we do that in our own company and I presume that every other company is probably following somewhat the same practice.

Q. I want to call your attention to Commission's Exhibit No. 1193-A and Commission's Exhibit No. 1193-B.

A. Yes.

Q. You will note, Mr. Coogan, that that is a letter dated July 8, 1930 from you to the Federal Trade Commission.

A. Yes, sir.

Q. I observe that you give a statement with respect to the Ironton base. This letter, you will note, states to the effect that after a certain period your competitors began to apply the Ironton base without restriction and that you were forced to follow the prices which they set.

Would you please explain that statement?

A. Well, I think it explains it; I think this exhibit explains it. It simply goes on to recite that on a certain date we put in this dual base at Ironton, on account of it making prices in which we considered an unnatural territory from that mill, and also recites the return
23131 which we received on shipments into that field from Birmingham. It says, "After making prices for a time on that basis, we found that our competitors were applying the figure which we were using as our Ironton base, regardless of the territory in which the prices were being made, and that we were thereby forced to discontinue at that time the use of the dual base."

Q. Do you remember what competitors made the lower price?

A. Well, from this previous exhibit that you showed me, of course, that mentions Lone Star's name, but I could not say whether they were the only ones or whether there were many, and I have no recollection myself.

Q. Taking up your LaSalle mill, Mr. Coogan, when you acquired that mill, what was your method of figuring prices?

A. We simply continued the method of figuring prices that had been used by the predecessor company. As a matter of fact, the man who had been in active charge of these western mills which we purchased in 1920, became a director and vice president of the Alpha Portland Cement Company so we continued the practices which those companies had been previously using.

Q. Which companies owned other mills in that vicinity of your LaSalle mill, I mean.

23132 A. Marquette and Lehigh both have mills at Oglesby, and LaSalle. They are both at the same place.

Q. Did you begin it as a basing point or not?

A. We continued it as a basing point after we purchased the mill.

Q. What was your situation with respect to prices when you acquired it? Did you continue quoting the prices you found or what was your situation as to that, Mr. Coogan?

A. Well, we made no immediate change in the price policy of the company because, generally speaking, the predecessor company had been quoting destination prices and meeting competitive prices at destination, so that we saw no reason for making any change at that time.

Subsequent to that time, of course, there had been various changes made either by us or by the companies having—the other companies having mills at that point.

Q. Now, when did you begin to operate your Bellevue mill?

A. The Bellevue mill was a part of our purchase in December 1920. It was tied up with the purchase of the LaSalle and Ironton plants.

Q. Are there any other mills near it?

A. Yes, sir. There are some mills near it. I 23133 think Aetna, and, well, there are a good many mills in Michigan I do not know. I think that is about the nearest mill. Of course, it is only a direct line between Chicago, Illinois, and Detroit, Michigan.

Q. Do you know whether or not any of those mills were basing mills at the time you began to operate the Bellevue mill?

A. Well, there were some mills in Michigan which were basing mills. Now, I have not been able to keep up with all of the changes that have been in Michigan. I would not want to say. I know there were some basing mills at that time, but a good many prices in that territory, which we served from our Bellevue mill, were made on the basis of Buffington, as I remember it. And there were probably some different mills nearby, but I am not sure of that, that may have had something to do with that structure.

Q. Did you ever make the Bellevue mill a basing mill?

A. Yes, that was made a basing mill, also. I think, I do not know whether it was 1925 or 1927, we made it. The two dates are in my mind. But, we did make it a basing

mill and continued it as a basing mill until we dis-
23134 continued operating it in 1931.

Q. What were the circumstances which led you to make your Bellevue mill a basing mill, Mr. Coogan?

A. Well, there was a fair consuming or consumption territory around there and we wanted to make—we wanted to be in position to make our prices at some of those points, of our general rate structure, so that the nearby points would be—our destination points would be based on our mill. In other words, so that as to the nearby points, our destination prices would be based on our mill at Bellevue. There was Battle Creek and Kalamazoo and some other fairly good consuming territory, but that mill, so far as we were concerned, was never a very serious factor, and I might say never very much of a success.

Q. Were there any other factors that led you to make it a basing mill?

A. I do not have a distinct recollection of any other factors, at this time.

Q. Well, what was the result after that? Were you able to assume price leadership in the State of Michigan?

A. We did not assume price leadership in the State of Michigan. As I told you, the condition up there was rather chaotic. We just went along, handling that mill and meeting prices as best we could. Now, I think it has been brought out that the mill has never been much of a
23135 factor. It was a high cost mill, and we only took the mill because it was tied up with the other two at the time the purchase was made, and we could not get the other mills without the three mills together, without the third mill, Bellevue, and we took it and tried to do the best we could with it. After spending considerable money on it, we decided that you could only make this really competitive by, perhaps, building an entirely new mill, and we did not feel that the conditions, commercial conditions, warranted an investment of that money. Therefore, we discontinued operating it in 1931, and the mill has been dismantled and removed except a few of the buildings.

Q. Now, there was offered in evidence this morning, Respondents' Exhibit No. 455-A and Respondents' Exhibit No. 455-B.

A. Yes.

Q. And I ask you to examine this and I will ask you a few questions about it.

23136 A. Yes.

Q. I notice in the left hand column, it carries the figure "August 22, 1914, Bellevue, Michigan."

Can you explain that, please?

A. Yes. Of course, that was several years before we purchased the mill. It was then owned by the Burt Portland Cement Company, and at that time they used to make their destination prices based on freight rates in effect from the mill located in Bellevue, and what cement we sold in that territory at that time, we had to meet those prices and therefore it is listed as having been a base at about that time.

Q. Was it a base when you acquired it in 1920?

A. No, it was not being used as a base, by our predecessor company, as a basing mill at that time.

Q. Now, you have told us also that in 1922, you acquired the Alpha mill, a mill at Alpha, Missouri?

A. Yes, sir.

Q. How was the mill operated when you first operated it?

A. We used the same method. We just simply continued that mill, practically the same way we found the predecessor company had been using it. The management of that mill was in the hands of our Chicago office. We made our destination prices based on St. Louis, Missouri. There was another mill located in there, a mill of the Mis-
23137 souri Portland Cement Company at Prospect Hill, and they had common freight rates, except to a few switching points within the switching limits of St. Louis, Missouri, and there were slight differences and we simply continued quoting the same destination prices and of course since that time there have been changes from time to time, but the principle of arriving at our destination prices has remained the same.

Q. I take it from what you said that the mill was being operated, or at least had been operated, as a cement mill prior to the time you operated it?

A. Yes, sir.

Q. What mill was that?

A. Continental Cement Company, I think, I am not sure, but I believe it is.

Q. Is there any other mill located in the St. Louis district?

A. Yes. There is another mill in that territory. I think I have already said that there was one mill located there, and that is the one I have reference to.

Q. Are there any others?

A. No, not in that immediate vicinity. There is one in the southern part of Missouri and one in the western part of Missouri.

Q. Is that mill located within the city limits of St. Louis, Missouri, your mill I mean?

23138 A. No, it is outside the city limits, perhaps six or seven miles.

Q. What about the freight rates with respect to that St. Louis mill, Mr. Coogan?

A. Well, those two mills carry common freight rates to territory, all territory except some, perhaps, now, some little variation in the switching limits into the St. Louis market.

Q. I think you have used the term "blanketed," that you found that they were blanketed.

What did you find as to the prices that were being quoted in the City of St. Louis?

A. Well, we found, when we took over that plant, we found that the mills had previously been using the minimum line haul rate in arriving at their prices which were quoted in the St. Louis markets and nearby, and we simply continued the same practice, changing from time to time as the line haul rate might be advanced or reduced.

Q. Yesterday, Mr. Coogan, you discussed this minimum line haul rate?

A. Yes.

Q. Did you explain yesterday the switching charge or minimum rate situation?

A. I think I explained it in reference to the Birmingham situation or in so far as Birmingham is concerned.

23139 In St. Louis, the situation is quite similar, the rate is probably different, but the principle remains the same; that, in the switching limits in St. Louis there are varying rates from these mills. Immediately outside of these switching limits, the minimum line haul rate is supplied by the railroads. We, in making our prices, in all of that territory, we used this minimum line haul rate. We must, of necessity, give all of our customers located within the switching limits and those immediately outside the switching limits the same delivered price. And if it is necessary for us to decide whether we are going to base that

price on the lowest freight rate or on the greatest freight rate, naturally we want to get all the money we can for our product and we simply take the rate and use it.

There are so many other cases where we are compelled to equalize conditions in making the rate where we have to take the lowest rate and apply it at a higher rated areas that we have no hesitancy in using the minimum line haul rate where we have the opportunity to do so, as it helps to balance off, to some degree, the inequities or inequalities that exist elsewhere.

By Trial Examiner Norwood:

Q. When you use that rate on the shipment, is that the amount that you pay the railroad for transporting the cement?

23140 A. No, not in all cases. We pay the railroad less than that.

Q. You mean you pay the switching rate?

A. We pay the switching rate, whereas when we get our price we base it on the minimum line haul rate and apply that to that part of the territory where the dealers are competing so that all the dealers will compete on the same basis.

The witness identified Resp. Ex. 456 as a letter
23141 of instructions dated December 4, 1916, written by him to Alpha's sales department.

(RESP. EX. 456 was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, will you look at Respondents' Exhibit No. 456 in evidence.

A. Yes.

Q. You have just been discussing the situation at St. Louis, Missouri, at the St. Louis mill, and at your Phoenixville mill.

A. Yes.

Q. With that document before you, can you tell us whether or not this is a similar situation to the one you have already described with regard to the Phoenix mill?

A. This is a similar situation, it is being handled slightly differently in this case, but the principle is the same. In this particular case, we found the Union Bridge people using it. We have used a minimum rate of fifteen cents, and from this letter of instructions this is evi-
23142 dently more than the switching charge complained of, but it is a little less than the line haul rate to consumers at the stated points.

Q. Did you initiate the policy set out in this letter, with respect to Respondents' Exhibit No. 456 now?

A. No, sir. That was following our competitor.

Q. Just what was your reason in meeting this kind of competition, Mr. Coogan?

A. Well, we had to. Where it had a tendency to make the price lower than the method we were using, we were forced to. Where it made prices—we wanted to get as much for our product as possible and we felt that we could get as much for our product as our competitors, therefore, we used the prices of our principal competitor in that market.

Q. I think you have already told us that that is a similar situation, similar to the situation that you are following in St. Louis at the present time?

A. That is correct.

Q. What about your other mills in other metropolitan areas; do you do the same thing today?

A. Yes. We follow the general policy, wherever we have a basing mill, of using the minimum line haul rate as a minimum in making up our destination prices, but of course there are no other mills which we have outside of Birmingham and St. Louis where that is any kind of 23143 an important factor: that is, our other mills are located at points where there are no large consuming points, or large consuming territory located within the switching limits; therefore, it becomes a relatively unimportant matter in so far as our other mills are concerned.

Q. Then, is this method of pricing around St. Louis something that is new or not new?

A. No. It has been in effect, well, I guess ever since we purchased that plant, and for, as far as I know, for many years before. It is also the same method which we have used and which I believe our competitors have used at that point to at least the same extent, for, well, I should say, more than twenty years.

Q. I think you have already mentioned your Phoenixville mill, which is at or near Birmingham, Alabama. Is that one of your larger or smaller mills?

A. Phoenixville is one of our larger mills, not the largest mill we have. Martins Creek is the largest mill that we have.

Q. Taking your Phoenixville mill, are there other mills near it?

A. Yes, there are two other mills in that immediate vicinity. The Lehigh have a mill there and the Lone Star have a mill there. There are other mills in Alabama located, perhaps, fifty or sixty miles from Birmingham,
23144 at Leeds, Alabama, and at Ragland, Alabama.

Q. How far apart are they, would you say?

A. The three mills at Birmingham?

Q. Yes.

A. Within three or four miles of each other.

Q. What, if anything, do you do with respect to the base or non-base price, when you acquired your Phoenixville mill; what did you do with respect to base or non-base price, I mean.

A. We continued the policy which had been used by the predecessor company. The freight rates from those three mills to points of destination are blanketed, with very few exceptions. When we took over that mill, we found that the other company had been using the rates from Boyles, and North Birmingham. For a time, we continued doing the same in arriving at our destination prices.

However, several years ago—I would not say the exact time, but some time ago we decided that we would make that a basing mill and apply the rate out of Phoenixville, wherever they might be lower than the rates from Boyles or North Birmingham. While that made—I believe the mill was, to all intent and purposes, a full basing mill prior to that time, but after that change, of course, it applied, wherever the rate made it different, from Boyles or North Birmingham.

23145 Q. Are you near any large consuming area at your Phoenixville mill?

A. We are near Birmingham, a few miles.

Q. I would like to call your attention to Commission's Exhibit No. 1274-A and Commission's Exhibit No. 1274-B, Mr. Coogan.

A. Yes.

Q. You will note that that is a letter from a Mr. W. H. L. McCourtie of the Trinity Portland Cement Company. It is addressed to F. H. Powell, of the Southwestern, dated April 17, 1928. It states that the Alpha Portland Cement Company has recently taken over Lindley Morton's Alabama plant and "My understanding is that Morton has signed up to withdraw from the cement business."

Can you explain anything that you know about the cir-

cumstances surrounding the acquisition of that mill, Mr. Coogan?

A. Well, some time prior to 1920, the Alpha Portland Cement Company conducted negotiations for the purchase of the Old Standard plant at Leeds, Alabama. Negotiations fell through and the plant was later purchased by Atlas Portland Cement Company. Our company had been, for some time, looking for a location or a plant in that section so that when Mr. Morton indicated his willingness to sell the plant, which he had recently erected in Birmingham,
23146 we were very glad to make the purchase after we had arranged satisfactory prices and terms. But, so far as the agreement with Mr. Morton was concerned, so far as the Alpha Portland Cement Company was concerned, there is no agreement of any kind which prevented Mr. Morton from doing anything that he might wish to after we purchased that plant.

Q. Have I covered all of your mills now, Mr. Coogan?

A. I think so.

Q. I would like to call your attention again to Respondents' Exhibit No. 455, if you please.

A. Yes, sir.

Q. I notice there on that exhibit, Mr. Coogan, that you commenced to use a considerable number of bases in the Middle West, all of them apparently coming in to use along about December 1, 1920. Will you explain that, please?

A. Well, that was the date that we had purchased these three new mills that I have previously referred to. And probably from 1917 or 1916, perhaps, we had been largely out of those markets, largely out of those particular markets, and had not kept pace with the competitive or commercial conditions in those markets so that when we took over those mills at that time on our records we adopted the base prices which those mills were using at the time we took them over, which accounts were so many showing up as of
December 1, 1920. Now, you will find that the same
23147 thing is true as to 1922, in connection with the purchase of the Continental mill at St. Louis, Missouri. At that time, that mill was meeting certain competition, and when we took over the plant, we went over the records and this base list, you see here is the base prices which we started to use when we took over that plant. They might have been used for some time prior to that, probably were.

Q. I also notice further on the same exhibit, that in

1916, and practically the same time in June, you began to use bases at six points in Texas. Will you explain that, please?

A. Well, I think I have already explained that. At that time we were handling our cement by shipping it to Jersey City, New Jersey, and reshipping by water to the various Atlantic and Gulf ports. This indicates the time that we were handling cement from those Texas ports inland and making our prices on the Texas ports.

Q. Did you continue to use those Texas bases for any considerable length of time after 1916?

A. No, we did not. We were very shortly almost entirely driven out of Texas as the new mills began operations there. Since then we have made some sales in Texas, we made one or two sales last year, but generally speaking, we have been out of the Texas market I should say since 1919 or 1920, or something like that.

23148 Q. I notice that in June, 1916, on this exhibit, you also established bases at a number of South Atlantic ports.

A. There the same thing applies. You will notice that with the south Atlantic ports and the Texas ports, prices are dated within a few days of each other and it is evidently part of our same movement in using the south Atlantic ports, and this, I think, extended up to the Gulf ports.

23149 Q. Does that apply to each one of those, I notice you say you established them, did you establish them or were they established by some other company?

A. I am not sure, I would not want to say that.

We were doing quite some business in that territory at that time, but I am not positive whether we established these bases ourselves, or whether we were meeting competition from some other company.

Q. Now, I also notice that in 1923, there appears to be another considerable group on this exhibit of bases entered at about the same time.

Will you explain that, please?

A. As I have explained, I think, previously, while in 1916 we were using the south Atlantic and Gulf ports as basing points as the new mills began to spring up in the interior, they put in basing prices, and as we found their new prices in the field we were compelled to go over and use those basing prices in order to arrive at our destina-

tion prices, and I should say from this statement that this indicates that they were being established along about that time.

They might have been in prior to the date shown on this exhibit, but this does show the date we started to use them.

23152 Q. Mr. Coogan, what I want to know, of course, is whether you, from the time you have been connected with your company and have had anything to do with the executive affairs of your company, whether or not on this question of establishing a base or non-base mill, whether you have ever come to any understandings or agreements with your competitors about what your action would be?

A. No, sir. I have not.

Q. Or about what their actions would be?

A. No, sir. I have not.

Trial Examiner Norwood: Has it ever come to your knowledge that any other officers of your company have had such an agreement, or agreements, or understandings?

The Witness: No, sir. It never has.

In fact, I am quite sure that had there been any such understanding or agreement, it would most cer-

23153 tainly have been brought to my attention, because I was directly in charge of that end of the business and I would have to know about anything of that kind before it could be made effective, and secondly there was never any discussion or any talk in our company about any agreement of such a kind.

By Mr. Leisure:

Q. Now, have you had—again using the same time limitation as before—since you have been connected with your company, have you had or do you have any agreement or understanding with any competitor that the Alpha Company would continue to use basing points, or follow or maintain any such thing as a basing point "system"?

A. No, sir.

Mr. Paulson: I want to object to the question. The witness has already answered the question before I could state my objection, so I move to strike the question and answer because it is vague and ambiguous.

He asked the witness whether or not he has had any agreement to support or maintain a basing point system.

Does he mean by that, have you ever agreed to use freight rate books of the Institute? Is that included in the question, and is the witness denying that when he says "No."

I think the question is indefinite and ambiguous.

23154 Trial Examiner Norwood: I think this is a perfect illustration of the usage of cross-examination. You can bring those particulars out on cross-examination.

23155 By Mr. Leisure:

Q. Mr. Coogan, when we adjourned for the luncheon recess, you were discussing whether or not your company had entered into any understandings or agreements of the kind that you were questioned about, and you had answered that there were none that you knew of.

If your company came to such an understanding with anyone, would that be a matter of business that would come to your attention?

A. It would have to be, because I was in direct charge of the sales of the company, and any agreement if there had been one, would certainly have come to my attention.

Q. One more question on that same subject.

You gave us some figures that you stated as a mill base. Has the mill base which you have set at any of Alpha's base mills ever been determined by an understanding or agreement, to your knowledge?

23156 The Witness: They have not, and I would certainly know about it if such an agreement existed.

Mr. Leisure: I ask permission to have marked for identification a paper purporting to be dated September 26, 1938.

Trial Examiner Norwood: It will be marked for identification as Respondents' Exhibit 457.

(The document referred to was marked "Respondents' Exhibit 457," for identification.)

By Mr. Leisure:

The witness identified Resp. Ex. 457 as a list of base prices used by Alpha in arriving at the delivered prices in the territory where it solicits business, revised through September 26, 1938. On this list there are some points that do not show any figures back of them, which indicates that Alpha is no longer using that particular point as a base point.

Q. Was that particular sheet given to you by any of your competitors?

23157 A. It was not.

Q. Where was it made up from?

A. It was made up in the Alpha office from information we received from our customers and field men and other commercial centers and simply represents the information as we could find it in the field.

Q. Suppose you tell us the purpose of this sheet, Mr. Coogan.

A. That list was to enable our general and branch offices and salesmen to promptly and quickly quote prices at any point they might be requested.

There was no distribution of this sheet made except to our branch offices. It did not even go to our salesmen.

In advising our salesmen, we simply pick out the basing point which we are using and which might affect the territory in which he is located. We do not send him the general list of basing prices which we are using.

Q. You say, except your branch offices—does that mean you do give it to your branch offices?

A. Yes, sir, we do. We send it to our branch offices, as a matter of general information.

23159 (RESP. EX. 457 was offered and received in evidence.)

23160 Q. Taking Binghamton as an example, will you look at Commission's Exhibit No. 111-U, which I hand you. That is the New York freight rate book of New York State, I think, No. 4.

Now, also look at Commission's Exhibit No. 3029, which is the correction sheet No. 80, and tell us if it were necessary to determine what your delivered price at Binghamton is at the present time, what steps would be taken; what steps would it be necessary for you to take?

A. Well, for a person who is not familiar with the matter of pricing every day, there would have to be several computations made, but our pricing clerks naturally become quite expert in figuring these things, and could do that much more quickly than I.

However, to arrive at what price we would quote at Binghamton, New York, we would have to look over the freight rate book and find the probable mill that might be shipping into that market and figure up the base price we

are using there, plus that of each of these mills, and
23161 figure that up and quote the lowest rate arrived at by that method.

I am going to accept that book as correct, and of course at the present time there are no emergency charges in—I should have a pencil, hand me a pencil, please.

The first basing point in the book is Northampton, which is the Lehigh Valley, and a rate of thirteen cents, which is forty-nine cents per barrel. The base which we are using in the Lehigh Valley, including cotton bags—I am figuring this in cotton—and with discount—is I think $1.95. Therefore, adding forty-nine cents to $1.95, would give us a price of $2.44, a total price of $2.44.

Now, the rate from Hudson—

Q. (Interposing.) I hand you also a correction sheet. Will you take that into consideration on those figures, please?

Trial Examiner Norwood: Is that correction sheet in evidence?

Mr. Leisure: Yes, your Honor, that is Government's Exhibit 3029.

Mr. MacIntyre: What number is the freight rate book?

Mr. Leisure: It is Government's Exhibit No. 1110-U.

23162 By Mr. Leisure:

Q. Go ahead.

A. According to that, that would not affect your thirteen cent rate. It would still remain thirteen cents, forty-nine cents per barrel.

On the rate from—on the rate form from Hudson to Alsen is thirteen and one half cents and according to the supplement, that goes to fourteen cents, which would be fifty-three cents per barrel. The base which we are using at Alsen is $2.15 including discount and bag and adding fifty-three cents gives a price of $2.68.

Now, Universal, of course, shows a rate of seventeen and one half cents, so that we would not have to figure the price from there.

Buffalo shows a rate of fourteen and one half cents, which goes to fifteen cents, according to the supplement, making the freight rate fifty-seven cents per barrel. The basing price which we are using at Buffalo is $2.00, therefore the delivered price figured on Buffalo would be $2.57 per barrel, in cotton.

York, Pennsylvania, is higher than either of the other rates, so we do not consider it.

Jamesville,—there is no base, so that is not considered.

Portland Point, there is no base.

23163 Glen Falls, there is no base.

Howe's Cave has no base. Therefore, the lowest delivered price that would be arrived at by taking Lehigh Valley base, plus the rate from the Lehigh Valley, which would, as I figure it, be $2.44 in cotton.

Q. Mr. Coogan, do you have any salesmen who regularly solicit your customers in Binghamton?

A. We do. We have several salesmen who are continually soliciting customers in Binghamton and in that vicinity.

Q. What are his, or their, regular duties in that work?

A. Well,—

Q. (Interposing.) Does he—do those salesmen ascertain prices in the manner you have already described?

23164 A. The salesmen in that territory, as well as all of our salesmen, keep in touch with all prices and policies being followed by our competitors in the markets in which they are soliciting business.

We expect this as one of their duties and they must keep us posted promptly as to any changes that they come across in their territory.

23167 Q. Mr. Coogan, I will say, lowest prices openly quoted; do you, at the present time, according to the 23168 methods followed in your business, attempt to follow, or do you follow those with reference to the market at Binghamton?

A. Well, we keep in touch with the market condition and prices, and we know almost immediately if there is any change in the market prices at Binghamton. We learn it within twenty minutes after the quotations reach Binghamton.

Q. How do you learn it?

A. Sometimes through our customers, sometimes through our own salesmen, and very often we have the quotations sent in by the dealers in confirmation of what they have already told us over the telephone.

You must bear in mind that while the Alpha company has a large number of dealers, I should say we probably quote about three thousand, I dare say probably twenty-nine hundred of those dealers are also quoted by one or several of our competitors, so that when they get a quota-

tion it is no secret, they make it public, and today, anybody with nothing more than ordinary intelligence can go into Binghamton, or any other town, and very quickly learn the price being quoted on cement in that particular market. And I could do that in practically any other town where there are dealers located, and not only do the dealers know the price that is being quoted, but you will find that a great many customers who purchase from the dealers are also familiar with the lowest market price being
23169 quoted in that market.

Q. How many dealers do you have in Binghamton?

A. I think we are quoting four or five dealers in Binghamton. How many we sell there, I could not say.

Q. Now, you said you used the delivery price of $2.44 as your price at Binghamton, computed, as you said—

A. (Interposing) That is, accepting these papers before me as being the correct rates, that is the way it would figure.

Q. Would you, or would you not, quote the price determined in that manner if your Binghamton representative, or your dealer, advised you of lower prices being quoted by your competitors, or by any competitor?

A. No, would try to make our quotation in Binghamton, as well as all other points where we quote, at least equal to the lowest price being puoted in that market by any of our competitors.

Q. What are the instructions to your salesmen, if any, with reference to whether or not they should report to the main office with reference to price changes?

A. We give positive instructions to all salesmen to report any changes in prices or market conditions or policies which they find in their field.

Q. Do you have any understanding, to your knowledge, or any assurance that some or any, or all, of your
23170 competitors will, on each of these successive occasions that you have described, adhere to this openly quoted lowest price at a given market?

A. No, I never know what my competitor is going to do in the future. The only thing I have any direct knowledge of is what he has been doing in the past, and I can only base our policy on the experience gained in the past.

Q. Now, when you quote a price determined by the lowest combination of base plus freight, as you have already

described, do you have any assurance that that will be the same price your competitors, or any of them, will quote?

A. No, we have not. And further, we have had occasions where such price was not as low as our competitors were quoting, and where we have been compelled to change our price in order to meet the competitive situation.

Q. I notice on this exhibit—may I have that, please? I notice on this exhibit, Respondents' Exhibit No. 457, there are a number of points here that are used as basing points, and you also show minimum freight at a certain figure. Please explain that.

A. The minimum shown there is, in most cases, I believe the minimum line haul rate, and from our experience, and reports in the field, it is the minimum freight rate which we find our competitors at those points using, 23171 and in making prices based in that market, we use the same minimum as we quote at any point where the freight from that mill is less than the minimum line haul rate.

Q. And have you told us how you obtain that information?

A. We obtain that information from quotations we pick up in the field, from advice from our customers, or from prices competitors are making, and advice from our salesmen.

Q. Now, take St. Louis, for example.

Is this minimum freight that you show in St. Louis, the minimum line haul charge that you use, or do you use some other charge—first, let me ask you what it is in St. Louis, if you know?

A. The base price we are using today?

Q. No, the minimum line haul rate.

A. The minimum line haul rate at St. Louis is thirty cents.

Q. What is it in Birmingham, Alabama?

A. As I remember, it is now nineteen cents.

In an example I gave on yesterday, I think I used fifteen cents, but there has been an advance of four cents in that rate, and it is now nineteen cents.

Q. Is the minimum freight the minimum line haul charge in those instances?

A. In both of those instances, it is, yes.

Q. Has it come to your attention in any way, at any

time, that there has been any meeting, or conference
23172 or understanding between any two or more of your competitors, at which minimum freight which could be used for any particular mill was discussed or agreed upon?

A. No, none that I have ever known of, and I am quite sure that I would have to know if such an agreement had been made, and it just seems to have been a policy that has grown up in the industry, generally speaking, to apply the minimum line haul rate in making up prices to any switching territory located near the mill.

Q. Now, for the moment, leaving your own companies, has there come to your attention any instance or any occasion in which other companies attempted to fix or determine the minimum freight used in the territory immediately near it?

23174 The Witness: Well, my observation is that every mill that has a base and uses a minimum line haul rate usually, or do always establish a minimum rate which they will use in making up prices to the nearby territory.

23175 The Witness: Of course, I have stated what I think the other companies do; in so far as I know, I know of no agreements or understandings of any kind between them. Naturally, I would not be familiar with what any other company might be doing in detail.

By Mr. Leisure:

Q. Now, Mr. Paulson suggested that you have testified that you use the minimum line haul rate to avoid using the switching charges, was that the purport of your testimony, Mr. Coogan?

A. The purport of my testimony was that we were forced to quote all of our customers in one territory the same price, and it just seems to be a matter of common sense to us to get as much money as we could for our product and to use a higher rather than take the lowest rate and use it. That is what we did, we use a minimum line haul rate because the customers located within that zone must of necessity be quoted the same price.

Q. On this same exhibit, Respondents' Exhibit No. 457, I notice here there is a number of Texas mills and you have the statement, "minimum rate plus five cents tax in Texas." Can you tell us whether or not that five
23176 cent applies to any shipment that the Alpha Portland Cement Company makes?

A. No, it does not, as I have said, we are not in that territory; we are almost entirely out of the Texas market. Last year we accepted one order for five thousand barrels in that market, which was an order given to us on the quotations of these companies; and the quotations of these companies were shown to us, and we had to accept and ship that order, or at least we did accept and ship that order. That is the only order I know about where we have shipped in there in probably a couple of years.

Q. What has been your experience over a period of years, Mr. Coogan? Will you tell us whether or not you have observed these minimum freight charges from these basing point mills changed or did not change or have they remained constant?

A. Well, I know in the case of our own mills they have changed in accordance with the changes in the minimum line haul rates put in by the railroads. During the past few years, there have been various changes and every time the line haul rate changes, so far as our own company is concerned, we apply the existing line haul rate. Now, in a number of other cases, by following the railroad tariffs it can be ascertained, easily ascertained, that that has been done by some other companies; but whether
23177 it has been done and by them or not, I do not know.

Q. Now, if there is a change, then, in the tariff or freight rate, that changes the minimum line haul rate at some one else's mill, what do you do, if anything, in ascertaining what the minimum freight rate from that mill is going to be?

A. Would you mind repeating that question?

Q. Now, if there is a change, then, in the tariff or freight rate that changes the minimum line haul rate at some one else's mill, what do you do, if anything, in ascertaining what the minimum freight rate from that mill is going to be?

A. Oh, we keep using the minimum rate which we have been using up until such time as we pick up enough quotations in that field to demonstrate to us that the mill whose base price we are using has changed. Now, after we pick up enough quotations to demonstrate that, we will usually change our own price, if we quote in that market.

Q. Will you tell us what the practice is of the Alpha Portland Cement Company with respect to whether or not it broadcasts quotations to its customers, periodically?

A. The Alpha Portland Cement Company periodically sends quotations to all of our dealers list, not only to our dealers but what we refer to as "prospective dealers"; that is, potential customers. We broadcast these
23178 quotations periodically, whether we have made changes in price or not. We do that in order to keep our customers and potential customers fully advised as to prices and, in a way, it keeps our name before them, and in that way, we hope it might bring us a little more business.

Q. Is that a new practice? Is that something new?

A. No, that has been in effect for more than twenty-five years. We formerly broadcasted them a little more oftener than we do now. I can remember the time when we broadcasted every fifteen days and now we do not do it quite as often as that.

Q. Where there is a change in these quotations, what do you do with regard to your periodical quotations then?

A. A change in price?

Q. Yes.

A. If there is a change in price, there are new quotations that go out, at our new price, and that automatically cancels the quotations which we have previously sent to them.

Q. Do you know whether or not your competitors follow a similar practice to the one you do with regard to broadcasting this information?

A. I know that some, if not all of my competitors do broadcast quotations. I do not know how, but their policy in that respect is not unlike our own.

Q. But as to changes in prices, have you ob-
23179 served whether or not your competitors also send out these periodic broadcasts when there are changes; have you observed anything bearing on that?

A. Well, yes, in this way, we find there has been a change by picking up these quotations in the field and getting reports from our men in the field, and we get almost immediate notice of any change in price.

Q. I think we had something in the Commission's case as to how long this took, or how quickly you obtained this information; can you give us any idea as to the time; how long did it take or did it usually take you to hear about price changes in the market?

The Witness: About twenty minutes after the particular quotation reached the particular town; that is correct,

By Mr. Leisure:

Q. What is that?

A. About twenty minutes after the particular quotation reaches the particular town; that is correct.

23180 Q. That is the time?

A. Yes.

The witness identified Resp. Ex. 458 as a letter dated May 3, 1929, written by him in Alpha's New York office to Alpha's Easton office; Resp. Ex. 459 is a 23181 carbon copy of a letter, dated May 3, 1929, written by the chief clerk of Alpha's sales department to its Chicago office with copies to Easton; Resp. Ex. 460 as a letter, dated May 3, 1939, written by the chief clerk of Alpha's sales department to the salesmen at Alpha's Richmond, Virginia office; Resp. Ex. 461 as a letter, dated May 20, 1929, written by the chief clerk of the sales department to the sales department; Resp. Ex. 462 as a letter, dated May 20, 1929, written by the chief clerk of the sales department to the sales department; Resp. Ex. 463 as a memorandum to Alpha's district sales manager for New Jersey as to prices being quoted by Giant and addressed by Palisades Park, N. J.; Resp. Ex. 464 23182 as a letter, dated May 29, 1929, addressed to him from Alpha's Chicago sales manager; Resp. Ex. 465 as a letter, dated August 7, 1929, addressed to him from Alpha's Chicago sales manager; Resp. Ex. 466 as a quotation, dated August 20, 1929, from Lehigh at Birmingham to the Birmingham Builders Supply Company at Birmingham, Alabama; Resp. Ex. 467 as a quotation, dated August 23, 1929, from Lone Star at Philadelphia, Pennsylvania, to a dealer at Clarence, New York; Resp. 23183 Ex. 468 as a quotation, dated August 23, 1929, from the Pittsburgh, Pennsylvania office of the Universal Company to a dealer at Millvale, Pennsylvania; Resp. Ex. 469 as a quotation, dated August 23, 1929, from Lone Star, Philadelphia, Pennsylvania to a dealer at Baltimore, Maryland.

23184 The witness identified Resp. Ex. 470 as a quota-23185 tion, dated August 23, 1929, from Lone Star, Philadelphia to a dealer at Mauch Chunk, Pennsylvania; Resp. Ex. 471 as a quotation, dated August 23, 1929, from Universal Cement Company, Pittsburgh, Pennsylvania to a dealer at Belleview, Pennsylvania; Resp. Ex. 472 as a

quotation, dated August 23, 1929 of Lone Star, Philadelphia office, to Sharon, Pennsylvania.

23186 The witness identified Resp. Ex. 473 as a quotation, dated August 23, 1929, from a company at Youngstown, to a dealer at Sharon, Pennsylvania; Resp. Ex. 474 as a quotation, dated August 24, 1929, from 23187 Lone Star, Philadelphia office, to a dealer at Sharon, Pennsylvania.

Trial Examiner Norwood: What do you know about it?

The Witness: That this was sent in to us by one of our salesmen and came to us in the regular course of business.

23188 The witness identified Resp. Ex. 475 as a letter dated August 26, 1929, from Alpha's sales department written by the chief clerk in that department; 23189 Resp. Ex. 477 as a quotation, dated August 22, 1929, from Standard, Cleveland, Ohio to a dealer at Clarence, New York to which was attached a note from Alpha's Buffalo salesman to the general sales manager; Resp. Ex. 476 as a note attached to Resp. Ex. 477; Resp. Ex. 478 as a quotation, dated August 22, 1929, from the Atlas Company to a dealer at Clarence, New York; Resp. Ex. 479 as a telegram, dated January 30, 1931, addressed to the witness from Alpha's Birmingham office; Resp. Ex. 480 as a carbon copy of a telegram, dated January 30, 23190 1930, from Alpha's Easton office to Alpha's Birmingham office; Resp. Ex. 481 as a quotation, dated February 1, 1930, from the Cement division of the Pittsburgh Plate Glass, Pittsburgh, Pennsylvania, quoting the price of the Pittsburgh Company at Pittsburgh, Pennsylvania; Resp. Ex. 482 as a quotation, dated February 1, 1930, from Lehigh to a customer at Pittsburgh, Pennsylvania; Resp. Ex. 483 as a telegram, dated February 10, from Alpha's Chicago office to its office at Easton, 23191 Pennsylvania; Resp. Ex. 484 as a letter, dated November 22, 1930, from Alpha's Chicago sales manager to its office at Easton, Pennsylvania; Resp. Ex. 485 as a letter, dated December 7, 1930, from Lehigh at Allentown to a dealer at West Roxbury, Massachusetts; Resp. Ex. 486 as a telegram, dated December 29, 1930 from Alpha's Syracuse, New York salesman to the chief clerk of Alpha's sales department; Resp. Ex. 487 as a quotation from the Lone Star, Philadelphia, Pennsylvania office to a dealer at Paterson, New Jersey; Resp. Ex. 488 as a quo-

tation dated February 3, 1931 from Lone Star, Al-
23192 bany office, to a customer or dealer at Readville, Massachusetts; Resp. Ex. 489 as a letter, dated April 21, 1931, from the chief clerk in Alpha's sales department to the various members in the sales department; Resp. Ex. 490 as a quotation, dated April 29, 1931, from Penn-Dixie to a dealer at Franklin Park, Massachusetts; Resp. Ex. 491 as a quotation, dated May 28, 1932, from Lehigh to a dealer at Easton, Pennsylvania; Resp.
23193 Ex. 492 as a quotation, dated May 31, 1932, from the Lone Star office at Philadelphia, Pennsylvania, to a dealer at Flemington, New Jersey; Resp. Ex. 493 as a quotation, dated June 3, 1932, from the Lone Star office at Birmingham, Alabama, quoting a price at Meriden, Mississippi; Resp. Ex. 494 as a quotation, dated August 2, 1932, from Keystone to a dealer at Rosslyn, Virginia; Resp. Ex. 495 as a quotation, dated August 12, 1932, from the Birmingham office of Lone Star to a dealer at Havana, Florida; Resp. Ex. 496 as a quotation, dated August
23194 15, 1932, from Universal-Atlas to a dealer at Macon, Georgia; Resp. Ex. 497 as a quotation, dated March 6, 1933, from Huron to a dealer at Augusta, Michigan; Resp. Ex. 498 as a quotation, dated April 21, 1923, from Florida, quoting a price at Daytona Beach, Florida; Resp. Ex. 499 as a quotation, dated September 20, 1933, from Southern States to a dealer at Lawrenceville, Georgia; Resp. Ex. 500 as a quotation from Lone Star, Albany office, to a dealer at West Roxbury, Massachusetts;
23195 Resp. Ex. 501 as a quotation, dated December 12, 1933, from Peerless, quoting a price at Wayland, Michigan; Resp. Ex. 502 as a quotation, dated January 1937, from Edison to a dealer at Andover, New Jersey; Resp. Ex. 503 as a quotation, purporting to be dated January 21, 1937, from Keystone to a dealer at Andover, New Jersey; Resp. Ex. 504 as a quotation, dated 1937, from Penn-Dixie to a dealer at Durham, North Carolina; Resp. Ex. 505 as a document, dated March 10, 1937, from Alpha's Washington, D. C. representative to Alpha's Easton
23196 office; Resp. Ex. 506 as a quotation, dated March 10, 1937, from Lehigh's Baltimore office to a dealer in Marlboro, Maryland; Resp. Ex. 507 as a quotation, dated March 10, 1937, from Lehigh to a dealer at Mullikin, Maryland; Resp. Ex. 508 as a quotation from Medusa's New York office, to a dealer at Washington, D. C.

Q. Now, Mr. Coogan, how did you come into possession of these papers?

A. Those papers were sent in to us, picked up in the field by our salesmen, and sent in to us in accordance with instructions. Now, in a few cases the quotations were mailed or brought directly into our office, and there is one there for Easton, Pennsylvania, which was brought
23197 into our office.

Q. That, of course, does not apply to your letters and telegrams?

A. No, those quotations of our competitor companies.

Q. You say brought in, brought in by whom, do you say, Mr. Coogan, by your salesmen, do you mean?

A. I said some of them by salesmen, some were mailed in directly by the people whose names are shown on the quotations, and one, as I remember it, was brought into our office by a representative of the dealer mentioned, that is the one of Easton, Pennsylvania.

23198 *Examination on Voir Dire by Mr. Wooden.*

Q. Mr. Coogan, referring to these exhibits that you have identified, in so far as they relate to papers purporting to be quotations and price announcements of competitors of the Alpha Portland Cement Company, do you know anything about them other than that they were picked up in the field by your salesmen and sent in to your office, or that some dealers may have sent them in direct?

A. Well, that is all I know outside of what the papers themselves show.

Q. That is what I mean, yes.

A. Yes, sir.

Mr. Wooden: Your Honor, I am not going to object to the identification, after that statement, although technically one might, but I do suggest that there seems to be a large quantity of the same type of documents about which the witness has testified as to how they get this information, and that unless respondents have some special reasons for all of these papers, that a few illustrative cases would seem to be sufficient to illustrate a given point and to be illustrative and give point to the witness' testimony; otherwise I am not going to object.

23199 Trial Examiner Norwood: They cover a variety of quotations from different competitors; do they not?

Mr. Leisure: Yes, sir.

Mr. Wooden: At different times.

Trial Examiner Norwood: Received as marked.

(RESP. EXS. 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, and 508 were offered and received in evidence.)

By Mr. Leisure:

Q. With respect to these quotations of your competitors that we have been discussing, Mr. Coogan, can you tell us in your experience whether it is customary or not customary for your own customers to advise you whenever new quotations announcing new price changes come into their hands?

A. They always do, sometimes they do it through our salesmen and sometimes they do it directly with our home office.

23200 Q. Mr. Coogan, I show you Respondents' Exhibit No. 509 for identification and ask you to tell us what it is, please.

A. This is a quotation dated July 10, 1930, from the Florida Portland Cement Company, Tampa, Florida office, and picked up by our salesman in Jacksonville, Florida.

In this particular case, the name of the dealer to whom that has been addressed has been cut out of the quotation. We very often pick up quotations where a dealer, for some personal reasons, does not want the other company to know that he has turned over to us their quotation.

Mr. Wooden: Does that paper show, Mr. Coogan, at what point the quotation applied?

The Witness: Yes, if you will notice the salesman, when he picked up this quotation, has written in pencil on top of the quotation, that it applies at Jacksonville, Florida.

Mr. Wooden: Do you know who wrote that on

23201 there?

The Witness: Our salesman.

Mr. Wooden: Do you recognize the writing?

The Witness: I think I do recognize that writing.

(RESP. EX. No. 509 was offered and received in evidence.)

23202 The witness identified Resp. Ex. 510 as a letter, dated July 11, 1930, from W. R. Taylor & Company, one of Alpha's customers at Pensacola, Florida, to Alpha's Birmingham office confirming a telephonic conversation which was held with the office on that date. The pencil memorandum in the corner was put on—I think I can identify the writing as being that of the manager of the Birmingham branch, and it constitutes—our Birmingham office, I should say, and it shows that at the time of this telephone conversation, there was an order entered for two cars of cement for shipment at a little later date, and the shipping dates are stated on this letter.

Q. What were the surrounding circumstances; was this a decrease or increase in the price?

A. This is evidently an increase in the price. The customer entered his order with us in order to protect himself for a fifteen day shipment for as much cement as he could take in.

By Mr. Wooden:

Q. At the old price?

A. At the old price.

By Mr. Leisure:

Q. Now, you have told us that it was customary to show these quotations to your people.

A. Yes.

23203 Q. Now you have also told us that it was customary and usual for you to receive notices from your customers?

A. Yes.

Q. Is it out of the ordinary or is it usual for a dealer to advise you that he has received a quotation from competitors of a higher price as is indicated by this exhibit?

A. It is very common, dealers notify us either directly or through our salesmen whether it is a reduction or an advance or whatever the change may be.

Q. Can you give him the name of the man who wrote that notation on there, Mr. Coogan?

A. I think that is Mr. Postelle's writing.

By Mr. Wooden:

Q. What are his initials?

A. C. P. Postelle.

(RESP. EX. 510 was offered and received in evidence.)

23204 Q. Mr. Coogan, when the dealers do notify you in this way, what has been your experience as to the circumstances under which they give you these advices?

A. Well, of course, I presume the primary interest of the dealer is to first find out what we intend doing, and secondly, to make an effort to place an order for a fifteen day shipment at the price which we had previously quoted him, and to get his order in before the time our quotations go out to him, if we decide to meet that new price.

By Mr. Wooden:

Q. Advanced price?

A. Yes.

Q. It would not apply in the case of a decline?

A. No, it would not apply in the case of a decline. He would then notify us and want a reduction on everything en route and perhaps some in his warehouse.

By Mr. Leisure:

Q. Now, Mr. Coogan, as to that, in a given marketing area where you have found, or have established a set of prices which are made up as you have stated, at some base figure plus the freight to destination, what is your experience as to whether you have ever had any occasion to quote at some destinations where there had not been any prior established market prices?

23205 A. Well, that would happen, and might happen quite often or frequently and does happen sometimes, but it would be a perfectly simple matter to figure the price up to a point at which we had not quoted, as it would be some place where we were quoting every day, but of course when we were quoting every day we would have it in our office records and on our customers cards, but at a new point where we had not been quoting we would simply figure it up in the same manner, that we would figure it up where we did have a customer, in a case where we figured a price.

Q. You say you would figure it up in the same manner, why would you go through that process?

A. Because, according to the best information that we have at that time, that would be the figure that has been previously used by other people in quoting prices in that particular territory and simply because it happens to be

another point where, perhaps, there was a difference in the freight rate, that would not change your method of figuring up your destination price.

Q. Do you have any assurances that that estimate, your estimate of that price would be correct?

A. None whatever, we only know what we have found in that territory in the past.

23206 Q. The question is whether you had any assurances that your estimate of that price would be a correct price; Mr. MacIntyre raises the question as to what you meant by a "correct price."

A. My idea of a correct price is the lowest price which I find at destination.

Q. Have you any assurance or knowledge at any time when you quote a price on a sealed invitation or secret letter that your price will be the same as that which will be quoted by your competitors, or any of them?

23207 A. No, I have no assurances of any kind in that respect.

Q. In your own experience, do you know of any specific instances where you have estimated wrongly and found your prices were higher or lower than that of your competitors?

A. Yes. We have found places where the prices which we had quoted or had outstanding to our customers were higher than some being quoted by our competitors and in some cases we have been compelled to correct invoices and to put out new prices in that territory, in order to meet the competition of the lowest price.

23208 Q. I am asking if that is the same situation now. If this same situation were applied to this thing in these specific instances, whether you had experiences where you were unable to get the business because you had not quoted a price which was low enough to enable you to get the business.

A. We do not quote a price as low as is quoted by our competitors.

Q. Yes?

A. And they showed us a competitive quotation with the result that we had to correct our prices to that basis and also to correct some invoices, in some cases.

Q. You say you do correct some invoices. Will you explain that, please?

A. When a man gets a quotation from one of our com-

petitors and showing a lower price on his cement than that at which we had billed him for it, and if the car was en route, or it has just reached his siding and indeed, in some cases they would try to have it on warehouse business, they would insist on our giving them the same price as they have been quoted by our competitors.

Mr. Leisure: I would like to have marked for identification at this time certain documents.

I will just have them marked for identification and let the witness identify them.

Trial Examiner Norwood: That may be done.

23209 (The documents referred to were marked "Respondents' Exhibits 511, 512-A, 512-B, 513, 514," for identification.)

The witness identified Resp. Ex. 511 as a letter, dated April 13, 1927, written by the chief clerk in Alpha's sales department to its dealer at Wilson, North Carolina; Resp. Ex. 512 A-B as a two page letter, dated April 11, 1927, from Park Hardware and Provision Company, Wilson, North Carolina to Alpha at Easton, Pennsylvania; Resp. Ex. 513 as a letter, dated April 13, 1927, from the chief clerk in Alpha's sales department to the South Side Hardware Company, Greensboro, North Carolina; Resp.

23210 Ex. 514 as a letter, dated April 11, 1927, from South Side Hardware Company, Greensboro, North Carolina, to Alpha at Easton, Pennsylvania.

Mr. Leisure: I offer them in evidence as Respondents' Exhibits No. 511, 512-A, 512-B, 513, and 514.

Mr. Wooden: Your Honor, there is no objection to the identification of these documents. They seem to be illustrative of the witness' testimony as to how the dealer seems to require them to meet the lower prices.

By Mr. Wooden:

Q. That is right, is it, Mr. Coogan?

A. Yes, sir.

23215 By Mr. Leisure:

Q. Mr. Coogan, referring to Respondents' Exhibit No. 511, in evidence, I notice that you authorized a dealer in that instance to reduce your invoice to the same price he had received from a competitor.

A. Yes.

Q. Will you explain that, please?

A. Well, Respondents' Exhibit No. 511, shows that we

received from our dealer at Wilson, North Carolina, information that other people were quoting a lower price in that market than the amount, or than the price charged on the face of the invoice which we had rendered him.

He took it up with us and in line with our policy to at least meet the lowest price at any destination, we authorized him to correct the invoice which he had received from us to the basis of the lower price which he had
23216 been quoted or at least which had been quoted to him by one of our competitors. Therefore, thereafter we sent him a quotation putting in this lower price which had been quoted to him by one of our competitors.

Q. Do you know at that instance, Mr. Coogan, whether or not the cement had already been shipped?

A. Yes, sir.

Trial Examiner Norwood: He said it had.

The Witness: Oh, yes, it is a case that had been shipped.

By Mr. Leisure:

Q. Now, using that exhibit, Mr. Coogan, to refresh your recollection, can you tell us whether or not you reduced your general level of prices in accordance with the seven-cent reduction at Wilson, North Carolina?

23217 A. There is every evidence in these exhibits that there was and we did make subsequent to the receipt of these letters and the writing of the letters, that we did make a reduction in our price in order to keep—in order to meet the new prices which were quoted
23218 by our competitors.

Q. Mr. Coogan, taking this letter from the Clark Hardware and Provision Company—

Q. Can you tell me this: whether or not you had already reduced your price at that point prior to the date that you received your letter?

A. (Witness examines the document.)

Q. I think Respondents' Exhibit 511 is tied up with the same exhibit.

23219 The Witness: This indicates that we had reduced our price, but it is evident from the letter that we did not reduce it sufficiently meeting—we did not reduce it sufficiently to meet the lowest price that was being quoted by some of our competitors at that particular destination.

and after receipt of this letter, we were again com-
23220 pelled to reduce our price in order to meet this competition.

By Mr. Leisure:

Q. Can you tell us whether or not that was the one in which you had heard of this change in price?

A. Well, no, the other letter, Respondents' Exhibit No. 514, indicates it, you mean the only one?

Q. Yes. Can you tell me whether or not this was the only one in which you had heard of this change in price, Mr. Coogan, or were there any others that gave you that information?

A. Well, no, the other letter, Respondents' Exhibit No. 514, indicates it, well, Respondents' Exhibit No. 514 and Respondents' Exhibit No. 513 taken together indicate the same situation in the same general territory.

Q. The reason I asked that, Mr. Coogan, I wondered if you had merely received one letter from one customer of this nature or whether you would have given them the benefit of the lower quotation which they claimed that they had received, without anything further?

A. No, perhaps without seeing the quotation, but if we saw the quotation, we certainly would give them the benefit of the lower price if one had been quoted to them. So far as the change beyond that; so far as changing our general going prices, or consented we would not change any
going prices unless we had evidence from more than
23221 one individual source, giving several quotations at different points in order to establish some sort of a pattern would be necessary on which we could work. We would have to get our salesmen or some other sources to get us that information.

In this case, we certainly immediately met the competition which was brought to our attention by our customer. If we were going to change our general prices in that territory, we would get prices and quotations from a number of different sources in order to get a pattern on which to work.

The witness identified Resp. Ex. 515 as a letter dated November 7, 1927 from the chief clerk of Alpha's sales department, to Cate's Lumber Company, Henderson,
23222 North Carolina; Resp. Ex. 516 as a letter dated November 4, 1927 from the Cate's Lumber Company,

Henderson, North Carolina; Resp. Ex. 517 as a letter dated November 7, 1927 from the chief clerk of Alpha's sales department to C. D. Ray and Sons, Oxford,
23223 North Carolina, Resp., Ex. 518 as a letter dated November 4, 1927 from C. D. Ray & Sons, Oxford, North Carolina, to Alpha's Easton office; Resp. Ex. 517 is Alpha's reply to Resp. Ex. 518.

23228 (RESP. EXS. 515, 516, 517, and 518 were offered and received in evidence.)

Q. Mr. Coogan, will you be good enough to explain these pencil figures on Respondents' Exhibit No. 518, if you know what they are?

A. The pencil figures indicates that this was received by the statistician in our sales department for checking purposes, and he checked this back to several base points, which shows that he evidently arrived at a conclusion that this particular price was made by using the Clinchfield base plus the freight rate from Clinchfield, and then he figures the price in cotton bags, and the paper differential, shows his figure to be the same price as that claimed in the letter, and then he also shows the net which we might receive on that if shipped from our mill.

By Mr. Wooden:

Q. In other words, your own quotation was made in there?

23229 A. No, this does not indicate that we made any quotation. This indicates that we had found in that market a price lower than we were quoting.

By Mr. Leisure:

Q. What about the memorandum on Respondents' Exhibit No. 516, the pencil notation on that exhibit?

A. Respondents' Exhibit No. 516, the pencil notations on that exhibit are on the same basis and checked into the same result, and in the same way as those on Respondents' Exhibit No. 518. In other words, they were made in the same way.

Mr. Leisure: I would like to have marked for identification at this time a paper purporting to be dated May 16, 1931.

Trial Examiner Norwood: It may be marked.

(The document referred to was marked "Respondents' Exhibit No. 519," for identification.)

The witness identified Resp. Ex. 519 as an Alpha quotation, Birmingham office, dated May 14, 1931, addressed to Alpha's dealer at Rome, Georgia.

By Mr. Leisure:

Mr. Leisure: I offer this in evidence.

23233 Mr. Leisure: I will identify that a little further.

By Mr. Leisure:

Q. Mr. Coogan, can you state the circumstances as to this writing?

A. Well, I cannot explain the circumstances. I know that this quotation was mailed.

Q. Let me put it this way; did you take any action on the basis of having received that communication and any writing thereon, and if so, what did you do?

A. We did.

Q. What did you do?

A. We sent a new quotation quoting the lowest price which he said he had been quoted at that destination after confirming it with the man in the field.

Trial Examiner Norwood: Objection overruled. It will be received and marked in evidence as Respondents' Exhibit No. 519.

(RESP. EX. 519 was offered and received in evidence.)

Q. Now, taking up another subject, Mr. Coogan;

23234 does your company subscribe to the Institute freight rate service?

A. We do.

Q. Going back prior to the issuance of the present freight rate books by The Cement Institute, did you use any other freight rate book prior to that time?

A. Yes; the Alpha Portland Cement Company has used a freight rate book since 1910. I think that we were the first company that developed the use of a freight rate book, which was in 1910, at which time we got up our own books and distributed them to our organization for their use in making prices.

Of course, at that time, the freight rate books were not on as large a scale and did not show anything like the shipping points which are shown and which have been increased, or new ones shown from time to time, and which now show rates from practically every mill shipping any perceptible amount of cement to a particular state in question.

Originally we were interested only in, I think, two basing points, that was practically all that was being used when we first started but we also gradually increased the number of points from which freight rates were shown when we established our own books.

Q. Now, would you mind explaining to us, Mr. Coogan, why you compiled freight rate books in 1910?

23235 A. Why, we compiled our books, because as I testified, about that time we began almost exclusively to go, or had gone almost exclusively at that time to a delivered price quotation basis and it was necessary for us to have something in the hands of our salesmen that he could promptly quote a price at any point at which he might be asked. Now, when we were quoting a mill price that was not quite so important, although even then he had to know the freight rate because his customer was not interested except in the laid down price, even though we were quoting mill prices, and we had to quote our destination price and we wanted our salesmen to have the best information in convenient form so that he could quickly quote such prices.

Q. I take it from what you have said, that you did distribute it to your salesmen?

A. Oh, yes, we did distribute to our salesmen ever since we got the books out.

Q. Take the present freight rate book; is the use of the present Institute freight rate book by your salesmen and the members of your sales office staff, the same as the use of the first book published in 1910, or does it differ, and if so, how?

A. No, the principle of the use is precisely the same as it was in 1910 except as I have stated that there are more shipping points shown in it, and the process is a little

23236 more lengthy but nevertheless the principle is exactly the same.

Q. Will you tell us, Mr. Coogan, briefly, how your freight rate books are used at the present time?

A. Well, we use them in a number of different ways and a number of different people use them.

Q. Take your salesman, as the first one.

A. The salesman carries with him the freight rate book and I would say—

Mr. MacIntyre: We are talking about the Cement Institute freight rate book, at this time?

Mr. Leisure: Yes.

Trial Examiner Norwood: Yes.

By Mr. Leisure:

Q. Continue.

A. The salesman carries with him the freight rate book, but a good salesman would probably know what prices we were quoting delivered in every town where he might have a customer and the only time that that particular salesman would use the freight rate book would be in case he might be asked to quote at a point at which he did not have a customer. Then he would have to use his freight rate books.

He also uses his freight rate books in case we make any change in our prices. When we do, he is notified;
23237 that is, we notify him of the change in the basing point which we are using, then he has to take his freight rate book and figure up his new delivered prices.

Now, we used to call upon ourselves to do a lot of work when we did that. We used to, when we first starting using destination prices, we used to furnish our salesmen with a list of prices to points in his territory, but in the event we decided to change our price, there would always be a lapse of several days before the salesmen would be advised of the changes in that territory, as we would have to send out new quotations and it is sometimes several days before we got down to the point of making up the new price list for each of the salesmen, and it would be several days more before it reached him so that we have found that with the use of the freight rate book, we can keep our salesmen in the field more fully and more promptly advised then we can in any other way.

Q. Now, I assume that your salesmen call on numerous customers in a day?

A. Yes.

Q. When a dealer asks a price of cement to be shipped the following week, let us say, does your salesman compute the price on the cement with this freight rate book, Mr. Coogan?

A. No, as I have said before, if he is a good sales-
23238 man when he goes into the man's office, he knows what his price is at that particular destination, and

if the dealer wants him to name the price for shipment next week or the week after, he will name it very quickly. As a matter of fact, the dealers know the prices of cement just as well as the salesmen and they do not ask the price, generally speaking. The price of cement is known by every dealer and a good many consumers and a good many other people.

In any particular town, anybody that wants to find out what it is, it is a perfectly simple matter to do so. I have made the statement that I can start out with a new mill and in a new territory, and not know a single price, and not know a single basing point rate, and not knowing any of the freight rates, and if I can secure, which I could, a few good salesmen, within a darn short time I could furnish you a delivered price at every point where I want to be quoted. That might be enlarged from time to time, but I could get it out very, very quickly if I had to do it.

Q. Then, as a matter of ordinary routine, does the salesman use the freight rate book every day in quoting prices?

A. No, I do not think that the salesman uses it every day, he uses it only when he is asked to quote at some place he has not heretofore quoted or where we advise him 23239 of a change in our prices up or down.

Q. Following up Mr. MacIntyre's question of a moment ago, what you have said about the freight rate books, does that apply to the Institute freight rate books as well as to your previous books, or is there a difference?

A. That applies to any freight rate book that you might be using.

Q. Now, I understood you to say a moment ago, that the salesman might use it to quote at a place where he did not have a customer. Would you explain what you mean by that or is that what you said? Maybe I misunderstood you.

A. Where he had not previously, I might have said that, but I would say that what I mean is where he previously had not had a customer, of course, there are potential customers in every town, or a dealer might say, "Give me a price at such and such a place." A dealer at one point might ask the man, might ask our salesman for a price for delivery at another place, for delivery of cement at a different point from where the dealer is located in which the salesman had not previously quoted a price, and he might use the freight rate book; in fact, he would very likely use the freight rate book in such a case as that.

Q. As to price changes, what is the practice?

A. When we change the prices, we simply notify
23240 the salesman as to the changes in our basing point,
the basing point used by us which might possibly affect the territory which he is traveling.

Q. Would that afford him an occasion to use the freight rate book?

A. Yes, sir. He would have to use his freight rate book in deciding what prices he would have to quote in the towns in which he had customers. Now, of course, by the time he got to see his customer, the customer would have already received his quotations and he would probably supply the salesman with what the price was, or tell the salesman what the price was, himself, but the salesman would know, however, if he was a good salesman.

Q. Is there any difference, then, at all, Mr. Coogan, between the method of quoting prices by your salesman today than the method used from the beginning, for more than twenty years?

A. No, there is no difference except there are many more—we are using many more basing points today than we did twenty or twenty-five years ago.

Q. Now, I think I have covered the salesmen.

A. Yes.

Q. Does anyone else in the sales department use your freight rate books?

A. Well, everybody, or almost everybody in our
23241 sales department uses the freight rate books. They
all have them on their desks and they use them from time to time for different purposes.

Starting in with the chief clerk, and the man I call the "telephone clerk," and the order boy, and the two men in the order department, the traffic department, they use them, they all use it. All of these people, they all make use of the freight rate books.

Now, understand, I do not say, and I do not want to be understood incorrectly. I want it understood that the traffic department does not use the freight rate books for shipping purposes, they use the tariffs for that purpose, but they do use the freight rate books in order to check their own tariff work.

By Mr. MacIntyre:

Q. You are still talking about Institute books?

A. I am talking about books we are using today, and the same thing is true of books we used in 1910.

By Mr. Leisure:

Q. Well, now, as to the freight rate books, take a typical order. Suppose some customer telephoned in and asked you the price for cement delivered in a certain town; does that ever happen?

A. Well, it happens sometimes but we are not asked the price very often. I do not think that you gentlemen
23242 realize the knowledge that almost everybody has of prices. They have certainly as much and perhaps more than we do, but once in a while your man in the office will be asked to quote a price. Then he gets hold of his freight rate book in order to try to quote a price quickly for he has got to use freight rate books in order to try to quote a price correctly and quickly, and the last being quoted at that destination.

Now, this is used in many ways. Of course, the man at the telephone becomes quite expert. He can almost quote a price at a glance. I think I should state that we have a system of customers' cards which we use and which sometimes he will refer to, but if there is no customer involved at that particular destination, then he will use the freight rate book and he will use his chart which he has. This is a very fast process used by our company, and in that way he will arrive at a price very quickly, and quote the person on the telephone.

Now, the order department will also use that book because that shows the freight rate situation everywhere very clearly and enables them to make use of this as a matter of general information.

Then, it goes into the Traffic Department, and the Traffic Department, while getting the rates and giving the shipping instructions from the railroad tariffs on file in
23243 our office, they do check to see that the railroad tariff rates agree with the rates shown in that book.

When an order is taken there, then the order is taken out to the shipping department and is passed on to the shipping department at the mill, and in case it comes in late at night, it is simply mailed to the mill or confirms telephone orders given earlier in the day, and is mailed to

the mill, and the shipping clerk at the mill will make up his bill of lading in accordance with those instructions and he will put the car number on it and send a report of that shipment to our Eastern office.

When that report is received, the order, which has already been handled by the order department and traffic department, will be sent to the billing department with the information which they receive from the shipping clerk at the mill, which will enable them to invoice the cement to the customer and mail the invoice to him.

Q. That is a typical order.

Now, are there any occasions when a man who takes an order would not use the freight rate book?

A. Yes, sir. I should say seventy-five per cent., probably more than seventy-five per cent. of our orders, the question of price does not come up, parties just telephone in and say, "ship so much cement" and in the absence of any advice to the contrary from us, the man who is 23244 ordering the cement assumes of course he will get it at the same price as the last cement.

Q. I am not quite clear as to what happens when you first get the order, when the price is quoted to the customer and the customer gives the order.

A. Well, it is taken.

Q. What is the first step that is taken?

A. Well, of course, there are forms on which the full information is entered. That is, as to the customer's name, and as to the shipping point, and the railroad instructions as to railroad movement and delivery, and as to the quantity required, and what is sold, and that is sent to the order department.

I have already enumerated the handling from the order department forward through the billing department.

23245

New York, New York,
September 14, 1939.

23246 F. M. COOGAN resumed the stand and testified further as follows:

Direct Examination by Mr. Leisure (Continued).

Q. Mr. Coogan, on yesterday, or yesterday afternoon, you were describing the various steps in your office for handling a typical order for cement.

I think you had reached the point where a form filled out by a sales clerk is turned over to the order department. When that form is received by the order department, does the price appear on it?

A. Generally speaking, it does not. If it happens to be an order on which they had quoted a price over the telephone, then the price would appear, but the order
23247 department, under ordinary orders as they come into the office—under ordinary circumstances the order department fills in our price.

Q. And would there be any occasion for the order department to use a freight rate book?

A. There is occasion for the department—the order department—to use a freight rate book if they—because as I said before, they usually, on the order form, note the freight down in the corner of the order, so they usually do use the freight rate book, but that is not the controlling thing. That is in the traffic department and there they get the freight rates and routing from the freight rate tariffs on file in our office, and use the rate books as a check on their own rates.

Q. You mentioned yesterday a card index, how do you use that in connection with your sales?

A. The card index comprises cards under the different towns, showing the separate customers on each separate card, and I think there is a notation on there as to the present existing freight rates and also a memoranda as to the dates and the price which had been quoted.

In other words, when we send out a periodical quotation, we will note that on the card, that a quotation was sent on a certain date at a certain price. Then, if we sent another

periodical quotation at a later date, even though the
23248 price is the same, it will also be noted on that card and it will also be noted if we send a quotation at a different price.

Q. Does the order department use the card index?

A. No, the card index is used by what we call our "quotation" clerks.

Q. How often is this card index made with reference to date?

A. Well, it is a continuing matter. It is continued from time to time.

Q. It is kept up to date, is that what you mean?

A. Yes, sir. It is kept up to date.

Now, we have a slight difference in our different offices, and especially where we took over the mills of other companies. In some cases, we have simply continued the methods which were in use by that company, gradually changing over to our own firm's system.

What I am referring to now is the system used in our general office.

Q. Now we have gotten to the stage of filling out the orders.

What is the next step, Mr. Coogan?

A. After the order is filled out, it goes to the traffic department, which, as I said, rates and routes the order, and it is through the traffic department that the instruc-
23249 tions are given to the mill for shipment where they attend to all of that, and after they have done that and completed their part of the transaction, it is sent back to the order department who make up a confirmation of the shipping instructions which have been given by the traffic department, and after they finish that form there it goes to the billing department for billing, after they receive the information as to car number and contents from the shipping clerk at the mill.

Q. You mentioned your credit department, does this order go through that credit department in any way?

A. Oh, yes, that is quite different.

I didn't mention the credit department because very early, before any instructions are given to the mill, all orders must pass our credit department.

Q. Is it necessary, Mr. Coogan, to prescribe the routing when you, for instance, turn a car over to the railroad at one of your mills?

A. I don't want to say it is absolutely necessary, but I certainly think it is advisable to prescribe the routing over which you want the shipment to move.

Now, if your mill is only served by one railroad, it might be possible not to prescribe the routing and to prescribe only the delivering road, but where the mill is served by two or three railroads you have to choose
23250 the correct originating line in order to assure yourself of the lowest rate.

Q. Where does your traffic department get the freight rate shown on the order slip?

A. They get them from the railroad tariffs, which we carry on file in our office.

Q. And what about the traffic department's use of the freight rate book; do they use it?

A. As I said, they do as a check on their own work, and also to check up the rates which appear in the Institute freight books.

Q. You say they check it up, you mean by that to check up the correctness of the rate?

Q. You gave to the former question an answer totally unexpected to me, Mr. Coogan. Would you state
23251 what you mean by referring to the freight rate books, with reference to the traffic department for checking purpose?

A. The traffic department has a complete set of Institute freight rates and from time to time as we get business at any particular point, the rates which they get out of the tariffs which are on file in our office, are checked with the rates which appear in the Institute's book, which assures correctness on both sides.

If they find any difference, they immediately notify The Institute Freight Rate Bureau, but I will say that so far as I have been able to observe, there are very few differences. Now there may be differences at a point which we do not use, but as far as the points which we use are concerned, I could almost feel safe in saying that we do not find any differences.

Q. And when your traffic department does use the rate books, as you have described, what rates is it that you are attempting—or that they are attempting to discover, in your experience?

A. Well, of course they must have the correct rates.

Q. What I am trying to get at is, what do you mean by the correct rates?

A. I mean the correct rates shown in the tariffs of the railroad companies.

There is only one correct rate and that is the 23252 rate in the railroad tariffs.

Q. Now, coming to the further handling of the order, take for instance after the traffic department has stated on it the mill from which it is to be shipped, as you have described, the freight rate, and the routing, what happens to it then?

The Witness: The order goes back to the order 23253 department and they make up a confirmation slip of the instructions which has been put on the order by the traffic department and send that confirmation to the mill, the information having been previously telephoned to the mill from the traffic department.

After they complete that, they turn the order over to the billing department and after they receive the proper information from the shipping clerk at the mill, either by telephone or by report, depending upon the location of the mill, they make up the invoice and send it out to the customer.

Of course, as I have stated, all of these orders earlier in the game must be approved by our credit department.

By Mr. Leisure:

Q. You have not told us what is done with the bill of lading which you said was made out at the mill.

A. They are made out at the mill and one copy retained at the mill and the other copy is sent to the general office and retained there, except in cases of special requests.

Ordinarily, we do not send the bill of lading to the customer for the reason that the invoices which we send customers contain all of the information which is on the bill of lading.

If they request it, under special conditions, we 23254 do send it to them, but usually the bills of lading do not reach our office until a day or two after the invoice has been made out.

We invoice all shipments and send out invoices to customers on the day shipments are made.

Now, there may be some little exception in the case of an outlying mill, as sometimes we do not get that information by telephone and we wait until the next morning

when we get their shipping report, and while the invoices are dated the day the shipments are made, once in a while they are not sent out until the following day.

Q. From what you have said, will you tell us whether or not it is customary, or whether it ever happens that the order department uses the rate book in handling the orders and the traffic department uses it also for the same order?

A. Oh, yes, they all use it for the same order.

The freight rate book might be used by four or five different people on the same order.

As I told you, a good many, in fact most of the orders, are simply telephoned in and there is no question of price mentioned until it reaches the order department. In that case the order department and the traffic department are the ones which use the Institute's freight books, but where it is a quotation—a new customer or somebody that wants a price at some point where we are not frequently
23255 quoting, then .. is used by the receiving clerk and is also used by another man in the sales department whom we call our "pricing" clerk.

Q. You say, "it might be used." Of course, "might be used" is susceptible to different interpretations.

Of course you realize, Mr. Coogan, that we are—in having you tell us exactly what your mills do and what your experience is, have you been describing to us exactly what does happen in your business?

A. Exactly.

Q. Is that the procedure that has been followed recently, or would you say that it has been a practice that has been substantially followed for more than twenty-five years?

A. That practice has been followed in our company's home office for more than twenty-five years.

23256 Q. With further reference to the freight rate book, would you say that it is true or is not true that in handling orders sometimes only the sales department may have occasion to use the freight rate book?

A. Well, of course, I consider the order and the tariffs and the billing departments an integral part of our sales department, so in talking about them, I never differentiate between those different departments.

They are all combined in one and of course every order that comes in is—on each order it is used by one or the other; that is, the rate book is used.

Q. Is your answer the same as to the traffic department?

A. The same thing is true of the traffic department, yes.

23257 Q. You have been describing certain cases, Mr. Coogan, thus far, in which the rate books are used.

I would like to ask you now whether it is always used or whether there are times when no uses are made of the rate book?

A. Yes, there are times when the freight rate book is not used in handling an order at any step in the proceedings.

That is easily explained by the fact that we get an order today from a man, it goes to the order department, they look up and find that they shipped that man three or six days ago, and they simply put down the information, which is contained on the other order, on the previous order.

Now they know they have access to the customer's card in the sales department and can check up at any time they want as to the price, and furthermore, a great many of their shipments are made on specific job contracts which have a fixed price. That is, which have a fixed top

23258 price, not a fixed low price, but a fixed top price, and unless there has been a reduction in price after the contract was taken, they can simply take it off of this card, which is made up as soon as we receive a contract in the office, and that contract price is fixed unless there has been a reduction in price since the receipt of the contract. In the event there has been a reduction in the price since the receipt of the contract, we use the reduced price on the contract while that lower or reduced price is in effect.

Q. And you have told us already that your executives fix the price that you will sell the cement at, as you have described.

A. Oh, yes, the executives fix the prices which we use at the various mills in fixing our destination prices, of course.

The executives—the mill figure which we use is only one of the elements in our destination costs. We have to add packages, discount, and freight rates, in order to arrive at our destination price.

23259 Q. Mr. Coogan, if there is any confusion in your mind, will you explain what you meant when you said "the executives fix the prices"?

A. There is no confusion in my mind as to what is done in our company in arriving at prices, as state.

The executives fix the figures which we are to use at our various mills in order to quote our prices.

As I said, that is only one factor. In addition to that, you have to consider discounts, packages, and freight, which you must add.

I also previously testified that when we go out and meet a lower combination than that arrived at by the figures used at our mills, the matter of how much we shrink in each particular case is a matter of executive discretion. There 23260 is in our company no fixed minimum, and each case is handled on its own merits.

Q. Before we go on, I would like to take up Mr. Paulson's other suggestion, the one about there being other freight rate books than the Institute book.

I think you told us that the original rate books issued by your company were books that you compiled yourselves.

Let me ask you as to those.

From what points did you show freight rates on your original books?

A. I think we showed freight rates at that time only from the Lehigh Valley and Universal, as those were the only two points we were using at that time in arriving at our destination points.

From time to time, however, we added additional shipping points, as we began using other mills as basing points. As a matter of fact, we made our mill at Alsen, New York, a basing point in 1914, and naturally as soon as we did that we added it to our freight rate books, and the same is true with reference to every other point that we might have used for making up destination prices.

Q. So that there will still not be any confusion as to the use you made of those books as compared to the use you make of the freight rate books issued by the Institute; as to those, let me ask did you distribute them to any- 23261 one outside the Alpha organization?

23262 Q. Mr. Coogan, in view of the suggestion made in the objection just stated by counsel, will you incorporate the time element into your answer?

The Witness: When we printed our book in 1910, we

used it ourselves, and distributed it to our own organization for—oh, I don't know, probably a year, or at least for several months.

Some of our competitors—now, please understand that this covered only the freight rates in the Northeastern section, because at that time we were interested only in the Northeastern section so far as freight rates were
23263 concerned.

It is true we handled some business to the south Atlantic and Gulf ports and reshipped from there, but these freight rate books did not purport, or did not show the rates except from two or three producing points which we were using at the time.

There came a time when some of our competitors—I think principally our small competitors—found out that we had these books and requested copies of them.

We had another issue printed and gave them to anybody that wanted them, on the basis of the printing cost. We prorated the printing costs.

Then we found even further that we had some state officials and some other people that requested the books; in fact, we had some dealers who requested the books, and in those cases we gave them books.

Shall I go on with the freight rate?

Q. Following Mr. Paulson's suggestion as to dates, you told us that you published those rates in 1910. Did you keep them up to date?

A. We kept our freight rate books up to date in
23264 our own organization until about 1915. At that time, The Cement Manufacturers Protective Association—or shortly after that—was formed and shortly thereafter they took over the issuance of the freight books, and as I remember it, they continued that until either 1922 or 1924.

At that time, there was no freight rate service except some of the small mills in the Nazareth district formed what they called the Nazareth Traffic Bureau. They established offices at Bethlehem, and they got out freight books for their clients, who prorated the expense of maintaining that traffic department or bureau.

The Alpha company was not a member and did not contribute in any way to that organization.

I think they continued until about 1929, at which time there was a Traffic Bureau formed in Washington, D. C., called the "National Traffic Bureau" and they took over,

or rather, took up the matter of issuing freight books with the individual companies. They got quite a few subscribers.

I might say that this Traffic Bureau was opened up by a man who had been formerly traffic manager of a cement company but who had been out of—

Trial Examiner Norwood: (Interposing.) Have you—just give the principal details of that situation.

The Witness: I don't understand you, your Honor.

23265 Mr. Leisure: Well now, Mr. Coogan, let me ask you whether or not your company participated in this last book you mention, the Nazareth book?

Mr. Porter: That is not the Nazareth book, the National.

Mr. Leisure: I would like to take up the Nazareth book first.

By Mr. Leisure:

Q. Did your company participate in this Nazareth book of service, Mr. Coogan?

A. As I stated, we didn't participate in the Nazareth Traffic Bureau, but we did subscribe to the National Traffic Bureau.

Q. Before that, how long did the Nazareth Traffic Bureau continue to operate, if you know?

A. From either 1922 or 1924 up until about 1929, and then the National Bureau took over the employees, or employee, I think it was, of the Nazareth Traffic Bureau.

Q. And did your company subscribe to the National Traffic Bureau—I believe you answered that you did?

A. We did, yes, sir.

Q. Now, as to your own books, what did you do about freight books during the period of time the Nazareth Traffic Bureau was operating?

23266 A. We maintained the old books that had been furnished by The Cement Manufacturers Protective Association and in our own organization, we kept them up to date and used them.

In fact, I think we had some of them reprinted for our own use, but we did not distribute them to anybody except our own organization at that time.

Q. Where were these National Traffic Bureau books issued?

A. Washington, D. C.

Q. Do you know how long you continued to use their services?

A. I think it was about the middle of 1930 that that was discontinued.

The service was entirely unsatisfactory. When we joined up, we thought it would be very beneficial, that we would have the benefit of having a Washington contact who would keep us fully advised, but the thing turned out to be wholly unsatisfactory.

Q. What do you mean by that?

A. Well, the man in charge of it didn't look after it and we dropped our membership in it because it was so unsatisfactory.

He didn't look after it and the work was not properly carried on.

Q. Now, in the day to day work in your method of pricing, as you have described to us this morning, is it or is it not necessary for you to have a compilation of correct freight rates?

23267 A. We must, of necessity, have a compilation of correct freight rates in order to intelligently carry on our business.

Q. What is the effect if you have incorrect rates, in your experience, Mr. Coogan? That is, what is the effect if you use rates that are not accurate?

A. The use of inaccurate freight rates would cause chaos between ourselves and our customers, because if we used a low rate, we would probably have the effect of depressing the market in that town, and if we used a higher rate, I suppose we would not get any business.

Q. Now you say you would not get any business; that is, when you quoted at a higher rate. Now, what would you do the next time you quoted at that point?

A. Well, we would bring our price down to compete with the lowest price which we found in that town, and of course we would have to use the correct freight rate in order to know what the cement was going to net us at our own mill.

Q. Mr. Coogan, you have been discussing the various services in the Eastern territory prior to the formation of the Cement Institute.

Let me ask you, were there any freight rate services in the West during that period?

A. There was a freight rate service in the West, I think beginning about 1915 or 1916.

By that time, of course, the Alpha company had
23268 very little interest in the Middle West except that part that could be reached from our mill in West Virginia, and I think that went under the name of the Midwest Statistical Bureau, and as I remember, we subscribed to that Bureau for books covering the territory which we served from our Manheim mill.

Q. Do you know whether Cement Institute freight rate service was established?

A. After we discontinued; that is, after the National Traffic Bureau at Washington, D. C., discontinued the freight rate service, it was taken up by The Cement Institute. That was about the middle of 1930 or in late 1930, I think.

Q. Did your company subscribe to the Institute service when it was started?

A. Yes, we were members of the Institute when it was organized in 1929 and, of course, that gave us the benefit of the freight rate service, after they started that service. Of course, during 1929 and to about the middle of 1930, there was no freight rate service in the Cement Institute.

Q. Now, Mr. Coogan, you told us that you had changed the number of headline points, or points of origin, from time to time in your own books. Were any more headline points included in the Institute rate books than there had been in prior books?

23269 A. Oh, there were many more headline points included in the books from year to year until today, certainly, all mills that ship any amount of cement in the territories, their rates are shown.

Q. Are the headline points in the Institute books confined to basing points?

A. Oh, no. They show, as I have stated, the rates from any mill that is actively doing business in the various states.

Q. Mr. Coogan, I want to call your attention to Commission's Exhibit 1110-U, being the New York rate book No. 4, and I notice on page 3 of that book there is a conversion table. Will you please explain for the record the purpose of such a table?

A. The purpose of the conversion table is to have a

quick computation of the rates per hundred pounds reduced to rates in cents per barrel.

Rates on cement are based in cents per one hundred pounds and this conversion table simply takes those rates and reduces them to cents per barrel, and in the handling of the fractions, you handle them the same, as I understand, as practically all other businesses handle them.

That is, where fractions are less than half a cent, they are dropped and where they are more than five mills, it is added to the next even cent.

23270 Q. In your experience, could you convert the rates without that table?

A. Yes, very easily.

23271 Q. How can you convert it, Mr. Coogan, in your experience, without using the conversion table?

A. You can do that. You don't need a pencil and paper, if you have an ordinary brain I think you can do it in your head.

For example, thirteen cents per hundred is forty-nine cents per barrel; sixteen cents per hundred is sixty-one cents per barrel.

Trial Examiner Norwood: Doesn't it run out to fractions very often?

The Witness: Yes, but I am dropping and adding the fractions in my mental computation. I am dropping or adding them, as the rate may call for.

Trial Examiner Norwood: You have to know the fraction before you drop it?

The Witness: Well, I figure the fraction in my head.

Trial Examiner Norwood: That is what I am asking you.

The Witness: I have done that.

Mr. Wooden: You don't have an ordinary brain then.

23272 Q. Mr. Coogan, following Mr. MacIntyre's suggestion, what was your first experience with the conversion table?

A. I don't recall when the conversion table was first used. I do not remember just when that was.

Personally, I paid very little attention to it, because I don't use it.

Trial Examiner Norwood: We will take a recess for five minutes.

(A five-minute recess was taken.)

Trial Examiner Norwood: Proceed.

By Mr. Leisure:

Q. Mr. Coogan, does your company at the present time publish any rate book of its own?

A. No. We do not.

Q. Mr. Coogan, you mentioned a moment ago the necessity for correctness of rates, what is your experience with respect to the accuracy of the Institute book as compared to your own book?

A. Well, it will be a little difficult to compare it, because they were not published as of the same time?

Q. Yes?

A. Of course, our book was a very simple book inasmuch as we had only one or two base points. I find
23273 that the books issued by the Institute are a very correct compilation of the freight rates as they appear in the tariffs of the railroads. Now, there are undoubtedly some exceptions to that, but I am basing my statement on the fact of comparing our rates and the tariffs with the rates in the book that they were issued about. Now, to some remote point there might be an error. However, in our own territory, they are very accurate indeed.

Q. Then, what would be, or would you be able to quote a price as you do now, Mr. Coogan, without the Institute book?

A. We certainly would.

Q. You say you would; what would your do if the Institute book was discontinued?

A. We would immediately compile freight rates
23274 from our tariffs to the points at which we have customers from time to time; as we secured new customers or new points of shipment we would add that to our freight information and we would very soon have books as complete or practically as complete as the Institute books are today.

Q. Would the same principle apply if you were just starting out in business, would you compile a freight rate book of your own; what would you do about that?

A. I certainly would compile a freight rate book of my own if we were starting up in business.

Q. Well, then, what is the advantage, Mr. Coogan, to your company of subscribing to the Institute rate service, instead of publishing your own book?

A. Because it is issued in an entirely convenient form. It has the advantage of being checked by several different

companies who maintain their own traffic department, and I think it insures correctness.

Q. You said you would start a book, if you were to start up today, you would publish a book; do you mean you would if there were no Institute book that you could subscribe to, or would you compile one anyway, I mean; just state what you would do.

23275 The Witness: No, I would subscribe to the Institute freight rate books.

By Mr. Leisure:

Q. Would it be any difference in expense between the two methods, Mr. Coogan?

A. Yes. If the company were starting up, we will say, a one plant company, and they had to compile and keep up the data to date of their own freight rates, there would be a considerable difference in the expense. In the case of a chain company, but companies do not usually start as chain companies, they usually start smaller and grow, after they become a chain company you probably will maintain a traffic department whether you have the Institute freight rate books or not.

Now, it is true with the Institute books your traffic department will perhaps be somewhat smaller than if you had no Institute books, because it certainly is a little simpler to check freight rates that are in the Institute books than it is to issue them, and there is some saving to
23276 the chain mills and a fairly good saving to the smaller mills.

Q. Let me ask you, Mr. Coogan, to your knowledge is there any understanding or any agreement of any kind between the Alpha Portland Cement Company and any other cement manufacturer with the Alpha Portland Cement Company in quoting prices as to the use of the Institute freight rate book?

The Witness: I know I have none and I am sure
23277 no responsible official in our company has any understanding or agreement that we will or will not use the freight rate books issued by The Cement Institute for the purpose stated or for any other purpose.

By Mr. Leisure:

Q. If any such agreement or understanding were in existence, would it be known to you, Mr. Coogan?

A. Inasmuch as the freight rate books are used in the

department under my control, I would certainly have to know it.

Q. Now, taking up another subject, Mr. Coogan—

A. Yes.

23278 Q. Mr. Coogan, I am addressing myself to this question and I am trusting that this word "dual" base is explained in the record.

A. Yes?

Q. I wanted to ask you whether or not, using that same term, "dual base," whether or not you have ever observed the establishment of a dual base by any of your competitors?

A. I explained yesterday about a dual base which we have put in at Ironton. We at one time did have another dual base applying from our mill at St. Louis. We had a price which applied at St. Louis and the St. Louis
23279 County, which was ten cents lower than the base figure which we used in quoting destination prices outside of that territory. The reason that we put that lower base within that prescribed territory was on account of a competitive situation which we felt existed in that market, and we felt the conditions warranted a lower price in that territory. That is the reason we put in that lower base, or lower dual base.

That was carried for some time. Later on there was a reduction in our base price at that point of something like thirty cents a barrel.

Q. Mr. Coogan, let me interrupt you there.

Did you say that if a dual base were established just as you have this moment described it, by one of your competitors; how do you know at what destinations prices are to be computed upon a special base, if any?

A. That can easily be picked up by the field men. We have found, in the northern part of Ohio, what we call a dual base. In other words, there was one base used in the State of Michigan and another used in Ohio, another base used in Ohio. There is no difficulty for us.

Of course, we do not quote in Michigan, but we picked up the quotations in Ohio and we simply made it a policy to meet the lowest price which we found at that destination and figured back how we felt that price was made up and then based our prices on that figure.

23280 If you want to get all the dual bases there have been, I remember one case where there was a lower

figure in the State of New Jersey than was used in other sections.

The witness identified Resp. Ex. 520 as a letter dated September 11, 1931 addressed to him from the chief clerk in Alpha's sales department; Resp. Ex. 521 as a
23281 Lehigh quotation, Allentown, Pa., dated September 10, 1931 to a dealer in Easton, Pa., which was brought to Alpha's office by a representative of the firm to which it was addressed.

23281 (RESP. EXS. 520 and 521 were offered and re-
23282 ceived in evidence.)

Q. Now, Mr. Coogan, I notice on this Respondents' Exhibit No. 520 in evidence, it is stated here that the delivered price was effective in the State of New Jersey only.

How do you know what the application of this new price, or where the application of this new price was limited in that way; how did you know that?

A. Well, I think that the letter indicates very clearly that previous to the receipt of this quotation showing this price at Easton, we had picked it up at several different points in New Jersey, quotations which indicated that at that time the Lehigh Portland Cement Company were quoting on that basis for shipment to those particular towns.

We have also found—Easton is a border town, and dealers in Easton compete with dealers located in Phillipsburg, New Jersey, just across the river, and when we found this quotation along with some other quotations along that border line point, we simply assumed that they were applied to the border towns in order to equalize competition as between dealers on one side of the border and on the other side of the border.

Q. Mr. Wooden asked you if that is your pencil memo-
23283 randum there; is that written in your handwriting; if that was in your handwriting?

A. Yes, sir. It is in my handwriting.

Q. Can you tell us what the pencil notation was?

A. Well, after receiving this information from the chief clerk in our sales department, and talking it over with our sales department, I put a notation for them to meet the competition and to send out quotations on that basis.

23284 Q. Did you continue to use your dual base at Ironton after 1922, when it was first established?

A. No, I think I have testified that temporarily due to

some of our competitors quoting lower prices, we discontinued the use of the dual base for a time, but after we decided to advance our prices from Birmingham and at the same time we could not, on account of the commercial and competitive conditions, advance our prices at Ironton, as I remember it, we reinstated that dual base and we have been using it ever since.

Mr. MacIntyre: What is the date of that, Mr. Coogan?

The Witness: I think it was 1932, but I do not want to be quoted on that. I cannot be positive.

Mr. Wooden: Reinstated in 1932?

The Witness: Yes, I think it was the latter part of 1932.

23285 By Mr. Leisure:

Q. Mr. Coogan, you have just told us that you established a dual base in St. Louis, Missouri, and I think you told us before that was in 1930; is that correct?

A. That is correct; yes, sir.

Q. Mr. Coogan, we will leave the Ironton dual base for a moment; and refer to the subject matter of that exhibit; which is Commission's Exhibit No. 971-31-A and 971-30Z. Will you tell us what the circumstances were, first, which caused you to establish this base in St. Louis, Missouri?

23286 A. This particular paper, I do not think refers to the establisment of that base.

Q. No, it does not. I will come to that after you have explained the other.

A. This is a letter written by me to the president of our company, dated December 1, 1930. While it refers to a dual base which we had had in effect at St. Louis previous to that time, this really refers to the, what some people refer to as the establishment of a base at another mill which we did not own.

Q. Will you explain that, please; what were the circumstances of establishing that?

A. We found at that time the Marquette Company, according to the best information that we could get from our customers and from our salesmen and from other people in that district, were making some pretty low prices direct to the field that we serve from our mill at St. Louis, and one of our other mills. We checked this information up as closely as we could and as soon as we could get at it, as near as we could figure it, it seemed that in most of the

cases where we were able to get some semblance of a check on prices, that they were using a figure of about $1.35 at their Cape Girardeau mill. That seemed to be about the figure.

Now, in view of it being impossible for us to meet the competition with the prices which we had been
23287 carrying, we found that it would be necessary to and we then quoted in that territory prices based on the price at Cape Girardeau; that is, from our own mills we used the Cape Girardeau figure of $1.35. We continued our base at Alpha, Missouri, of $1.55, with the ten cents less base still maintaining; that is, the dual base at points in St. Louis and St. Louis County ten cents below that base.

Q. How long did you maintain that dual base at St. Louis?

A. As I remember it, that dual base was discontinued. I do not know whether it was 1931 or 1932.

Now, the reason it was discontinued is because we had a very large decrease in our prices at that mill; in fact, the reduction was approximately thirty cents per barrel, and while we had to, on account of competitive conditions, take the thirty-cents off of our price, we did not want to take thirty cents off the lower bases, so that we had a flat lower basis all over and have been doing that ever since.

Q. I notice in this Commission's Exhibit No. 971-31-A, you say—

23288 Q. You state there, "The competitive condition appears to have cleared up on February 3, 1931, after which time we used the same price."

In view of what you have just told us, will you explain that fact, Mr. Coogan?

A. I think this is an extract from an answer that I made to a part of the Burns and Clark questionnaire. Of course, the explanation which I have just given is the real explanation of that thing, the competitive situation evidently did not clear up or we would not have reduced our price so drastically, and the real reason that the dual base was discontinued was that the price dropped down so low that we did not want to have them any lower, surely.

23289 Q. Now, how long then, did you continue, Mr. Coogan, to use this base at Cape Girardeau?

A. We have used one base or one figure or another ever since that base was established in 1930 at Cape Girardeau.

But, so far as I can remember, any changes which have been made in that base from time to time since then were instituted by the company owning a mill at that point.

Q. Was your establishment of that base that you have described, and the circumstances surrounding it, and the reasons for establishing it, was that in any sense a retaliatory measure on your part?

A. No, it was an effort on our part, a sincere effort to try to meet the competition at the destinations which we found the company and mill at that point quoting, according to the best information that we got.

Q. Have there been any other occasions when you have shipped on a base, or when you have established a base at any other mill, Mr. Coogan?

A. Yes, there have been other occasions when we have been accused of doing that.

Q. Tell us about that, please.

23290 A. In the State of Ohio, we have a mill located in southern Ohio. We are in direct competition at that point with mills located at Zanesville and Dayton and Portsmouth. We tried the experiment, I think it was early in 1931, we had been meeting what we thought was all kinds of competition, we could not find out where it was or what it was. It was spotty. It depended upon samples you would find in one place and some place another so we decided to try the experiment of quoting a flat price all over the State of Ohio.

As I remember it, we put that price in in 1931. The price which we quoted at that time was $1.75 per barrel in cotton bags delivered to any point in the State of Ohio.

I think a few weeks later we found that still we were not meeting competition and we reduced it to $1.55 in cotton bags. Then, I think we reduced it still further to $1.50 and we maintained it at that price until about the latter part of May, as I remember it, May 31, 1931.

Our experiment had not had the desired result, we did not get any more business from it, and there still seemed to be competition which we were not able to meet.

Q. What did you do then, Mr. Coogan?

A. Well, we decided that we would try the effect, inasmuch as we were in direct competition with the mills
23291 at the points that I have named, that we would put in a low base, and that we would apply that base

from the mills located at Zanesville and Dayton, Ohio, because in checking up the information we had it was our opinion that the price which we set at that time was about the price that they were using in quoting on some business which had come up in the neighborhood.

Therefore, in May, May 31, 1931, we put out a price based ninety-six cents stripped at Ironton, Zanesville, and Dayton.

Q. What mills are located at Zanesville and Dayton, Ohio, and what is the name of the siding or town where they are located?

A. At Zanesville, Ohio, it is Fultonham, and at Dayton, Ohio, it is Osborne. At Fultonham, it is the Columbia division of the Pittsburgh Plate Glass Company—I beg your pardon—the cement division of the Pittsburgh Plate Glass Company, they have a plant there, and at Osborne, Ohio, well, there is a plant of the Wabash Portland Cement Company, and one of the Southwestern Portland Cement Company, there are two plants there.

23292 Mr. MacIntyre: When you refer to Zanesville, you have intended to refer to Fultonham?

The Witness: Yes. In the industry, we refer to the Pittsburgh Plate Glass Cement plant as being located at Zanesville, and to the other plants as being located at Dayton. Technically, they are located outside of those towns at small places, Fultonham and Osborne.

By Mr. Leisure:

Q. Now, Mr. Coogan, you told us you determined on this figure of ninety-six cents.

Will you explain the circumstances which led you to that determination?

A. As near as I can recall the figure that was about the price which we felt the mills located at that point were using in quoting on some business which we were both trying to get, and we decided to use that same figure; that was as near as we could get to the figure at that time.

Q. And did you use that at your mill at Ironton?

A. Yes, sir.

By Trial Examiner Norwood:

Q. Those prices were not based on your mill?

A. We use those prices at our own mill as well as at the mills at the other two points.

Q. You use that base for shipping to all of your customers?

23293 A. Yes, sir.

The witness identified Resp. Ex. 522 as a letter dated May 18, 1931 from the chief clerk of Alpha's sales department to the other members of the sales department.

(RESP. EX. 522 was offered and received in evidence.)

Q. Now, will you explain, for the record, Respondents' Exhibit No. 522, in evidence?

23294 A. In mentioning the base of ninety-six cents stripped, which we used in Ironton, Fultonham, and Osborne, I think I said "May 31, 1931;" this exhibit would tell the date and set the date at some time about May 18. I want to correct that. Then, while this shows $1.46 in comparison with my statement of ninety-six cents, the price here includes the cloth bags and the discount, which amount to fifty cents a barrel, which added to the figure of ninety-six cents makes it or explains why this is mentioned there as $1.46.

Q. Now you have also said, Mr. Coogan, that you established and began to use a base of ninety-six cents.

Will you explain to the Examiner what you mean by that, and just what you did?

A. We established that base in our own mill, and according to the information of our own company, and, I might say, according to the notion of our own company, in using that figure as to the other mills in order to arrive at our destination price, we were giving full force and publicity to the quotations which we believed that the mills located at those points were quoting in the field where we were both striving for business.

Q. Then as a result of your exhibit, Respondents' Exhibit No. 522, what, if anything, did your sales department do?

23295 A. Our sales department would immediately send out quotations on that basis and of course if there are any points handled at other offices, which might base on our Ironton or on any of our other mills, they would naturally make those changes immediately.

Q. How long did you continue to use that Fultonham and Osborne basing point?

A. I think they were discontinued just about the end of 1931; just about the end of December, 1931.

Q. Will you tell us what the reasons for discontinuing your basing points were?

A. When we established the business—the low base, I should say—

Q. What was that?

A. When we established the low base, the low price at our own mill and also put into effect that same low price at our other mills, we felt it was perhaps for the purpose of and for the result of giving us more business and enable us to pick up a larger proportion of the going business that was available in the markets involved. Now, we tried out that experiment until the latter part of 1931, and we found that we were not getting any more business than we had previously been getting, and so far as our own company was concerned, we decided that both of our plants were ineffective, and now our other plan was ineffec-
23296 tive to bring about the desired result, so that when we sent out new quotations in December, 1931, we simply sent them out on the basis of our own figure at Ironton, and then we decided to see what our competitors located at these other points would do.

Had they continued their bases, of course, we would have had to meet them; but after inquiries about it among the neighbors and reports from our salesmen and from our customers we found out that the companies located at those points had simply met the competition of our prices and it was not necessary for us to take any further action.

Q. Did the two mills continue the prices which they had been quoting as base points at Zanesville and Dayton, Ohio?

A. No, shortly after, I don't know the exact date, but shortly after that, and evidently from our price reports, they quoted the same prices that we had quoted, based on our mill.

Q. Now, in the light of your present explanation, was this activity of your company in Ohio in any sense a retaliatory measure?

A. Well, no. It was not a retaliatory measure in any way. It was simply another effort to find out a way to meet competition which was existing according to all the reports which we got from the field.

Q. And to your knowledge did you, or any of your
23297 executives; first, did you put a flat price in Ohio after you had discussed it with any of your competitors?

A. I do not understand your question.

Q. Before you put the flat price in Ohio, did you discuss it with any of your competitors?

A. It was not discussed with any of our competitors. I can state that very positively because at that time I happened to be the only active executive in our office and that step was taken when there was only one other officer there, and while it was discussed with him, he took no active part in it and there certainly was no conversation with anybody outside of our own office.

Q. I would like to ask you the same question with respect to using Osborne and Fultonham; did you, to your knowledge, discuss that with the executives or executives or employees of any other company before doing that?

A. Well, that is the one that I did myself, and I will make the statement that wherever the Alpha Portland Cement Company have put in or have used base figures at anybody else's mills for making destination prices, that there was no conversation, there was no agreement, there was no understanding, there was no contract either direct or implied, between ourselves or other executives of our company or any other employees of our company,
23298 with any other company or their employees or executives or officers.

Q. In your position, if there had been such an understanding, would it have come to your attention?

A. In the two particular cases in question, I handled them personally, and in any other circumstances almost of necessity they must come to my attention; in fact, they must of necessity come to my attention absolutely because that was the department that I have direct charge of.

Q. Now, going to another subject matter, Mr. Coogan.

A. Yes.

Q. Mr. Coogan, do you know whether your gross sales in your account books are entered on the amount the buyer pays or on the net?

A. The deduction of freight.

Trial Examiner Norwood: What was that question?

By Mr. Leisure:

Q. Mr. Coogan, did you and do you enter your gross sales in your account books on the amount the buyer pays or the net after the deduction of freight?

A. We enter the gross amount in our ledgers whenever

the freight happens to be prepaid, when the freight is not prepaid we enter in our ledgers the net amount of the invoice after the deduction of the freight but including the discount, and packages.

Q. Now, in view of the fact that you have already told us that you sell at delivered prices, is there any reasons for your making entries in that fashion?

A. Well, that is the way that our invoices are rendered to our customers and that method has been arrived at from years of experience as to the most satisfactory way of handling our business, both as far as we are concerned and as far as our customers are concerned, and that is the method that we use.

If we are entering the freight, it would simply make a lot of cross entries and it seems to me just a plain common sense way of handling it.

Q. Well, you say if you entered them otherwise, in your experience did you ever enter them with the gross amount of the invoices on the ledgers?

A. Oh, yes, for years our business was carried on the basis of filling out the full destination price without any deductions.

Q. What was your experience with respect to making entries in that way?

Mr. MacIntyre: May we have the period of time shown here, when the witness says "for years" it is a little vague.

By Mr. Leisure:

Q. Can you give us the time?

A. I do not know when was the exact time, but for many years after we started quoting destination prices we used that method and intermittently in some territories we did put it in. I think that was in the Boston territory, when we did have a low price in that market in an attempt to meet foreign competition, and in order to permit diversions we asked or insisted that the freight bill be returned to us as proof of freight payment.

As a guess, I would say that we continued the billing of the full amount up to some time in about 1920 or 1922.

Mr. MacIntyre: I just wanted to know whether it was ancient history or something recent.

Mr. Leisure: "Ancient history" is a rather elastic term.

By Mr. Leisure:

Q. What did you do after that, Mr. Coogan?

A. After that, we deducted the freight from the face of the invoice. The customer paid us the net amount of the invoice and we entered in our ledgers the net amount of the invoice including the discount and packages.

Q. Now, you have mentioned a moment ago, the term "diversions", Mr. Coogan? What do you mean by that term, as you used it? What does it mean?

A. Well, there are two forms of diversions in the cement industry; or in the cement market.

23301 One is the diversion of cement purchased for a specific job, and going for a specific use and diverted or used, that cement, elsewhere; by diverting the use of that cement into other channels, but the matter of diversions most generally referred to by those outside of the industry is the matter of diversion of shipments from one point to another; that is, the customer will order cement from us and order it shipped to a particular point and then divert it en route to another point at which the freight rate may be, that is, the freight rate from our mill, would be less than to the point at which it was originally ordered. In other words, the freight that he would pay to the railroad company would be less than the freight allowance on our invoice.

Q. Going back over all of your experiences with the Alpha Portland Cement Company, would you say that it has had any consistent attitude towards diversions as to either of these classes?

A. We have consistently used every conceivable effort to stop diversions of cement in both classes since 1910.

Q. Will you explain why, please?

A. Well, I think the only controversial question is the matters of diversions from one destination to another here. Now, we certainly cannot continue our consumer and customer relations if we are going to allow the diver-

23302 sion of cement into markets where we already have dealers.

Q. Why not, Mr. Coogan?

A. I think the best way to take a concrete example of what it might mean to us. You take in Brooklyn, New York, today, there are building material dealers with yards located at the waterfront. The freight rate from our mill to those on the waterfront is forty-two cents

per barrel, and in rendering an invoice to them, we bill it at our delivered price and then deduct the freight. There are many interior yards in Brooklyn which are competing with these waterfront yards, actively competing with them, to which the freight rate from our mill, and when I say our mill I will say the Lehigh Valley because the rate is alike from all of the mills there, is fifty-nine cents per barrel.

When we render them an invoice we deduct fifty-nine cents per barrel. If we allowed the people with interior yards to go to the railroads and divert those shipments to a waterfront yard, it would mean that they were getting the cement seventeen cents a barrel cheaper than the man whose yard is located at the waterfront. Conceivably, the waterfront dealers would not permit that or would probably come to us and we would probably have to reduce our other price, our price to them, seventeen cents.

2303. We have had one case where that was done and we collected from the railroad company for it. Then you can go along and show a great number of other instances along that same line today; but we will take another example of a little different type which will make it still clearer.

A man orders a car shipped from our mill to a point where the freight rate from our mill is sixty cents per barrel. Now, he diverts it to a point where the freight rate is forty cents per barrel. Now he is getting his cement, if we allow that laid down in that town at twenty cents per barrel cheaper, less than we are quoting today to our dealer in that town, and we certainly must protect our dealer customers, every dealer customer, and we must treat them all alike.

Q. Now, as to other type of diversions from the original purpose, you have testified that there is another type of diversion from the specific use to which the cement was originally intended; what is your objection to that?

A. We go out and we protect a dealer or a consumer for a specific job at a specific price. We cover him for the requirements of that job over an extended period of delivery, sometimes it may go as much as two years, but usually one year. In the meantime we may have advanced our price and we certainly do not want that man to go and

use that cement, which we have sold him for that spe-
23304 cific purpose, on other work which has come up, and on which perhaps he has bid his price at the higher figure, and divert the cement from that lower contract on to it. Now, you must bear in mind that when there is a decline in price, we give the buyer the benefit of that decline during the time that the lower price is in effect on contracts for specific jobs or any other kind.

Q. In quoting the trade prices, is the net that you receive at any one of your mills the same for all shipments that you make from that mill?

A. No, there are varying mill nets at practically all of our mills.

Q. No, take another case, take where your mill is a base mill that makes the price, generally speaking, that makes the price in that territory, do you receive the same net on all shipments?

A. Well, yes, we receive the same net on all shipments in the territory where the combination of our base figure plus our freight rate makes the price except that in a few instances that I have mentioned yesterday that—where we use the line haul rate in which case we get a little higher price than what we call the base figure, but I might say about that that in the case of all mills, all of our mills, the net received for cement is always somewhat under the base figure which we have set at that mill, made neces-
23305 sary by absorptions as we reach out to meet competition of other mills.

By Trial Examiner Norwood:

Q. That reduces the average base, does it?

A. Later on. The latter one does. The latter reduces the average base.

By Mr. Leisure:

Q. You are not referring to shipments in the territory where your base controls?

A. No, No indeed. Where our base controls they would all be alike except to the little switching point.

By Trial Examiner Norwood:

Q. Except for the minimum line haul?

A. Yes, sir.

By Mr. Leisure:

Q. Now, you say that your base controls. When you reach out and sell some in competition in territory near some other mill, then does your mill net shrink or does it not?

A. Yes, it shrinks where we reach out to meet other competition.

Q. What about the effect, Mr. Coogan, or what effect would it have on your net if a carload destined for "A" where the delivered price required you to shrink your net twenty cents, as you have just described, were diverted to "B" where the delivery price as such as to require
23306 no shrinkage? What effect would that produce in the territory?

A. We would get twenty cents less than if we had made the shipment to the original point. We would get the same net as if—the same net as if it had gone to the other point but the customer that had made that diversion would be getting his cement for twenty cents a barrel less than what other customers are getting it in that same town.

Mr. MacIntyre: Is the record clear that it would make no difference as to the net that the man received?

The Witness: I am perfectly willing to make it clear that it is true that the net we would receive, of course, would not change but it would enable the man to get his cement cheaper than other dealers, and undersell them.

Mr. Leisure: I take it that Mr. MacIntyre means by "the man" the company.

By Mr. Leisure:

Q. I meant to ask you, yesterday, Mr. Coogan, when you were talking about dealers whether you have exclusive dealers arrangements in each of your towns?

23307 A. Not exclusive dealers. There are no exclusive dealers almost anywhere in the cement industry today, while there may be an occasional dealer who has perhaps only our brand or some other brand, generally speaking, in the early days of the industry we had very exclusive dealers, but that disappeared very largely in recent years.

The witness identified Resp. Ex. 523 as a letter dated March 17, 1916 from him to Alpha's sales department and salesmen.

(RESP. EX. 523, was offered and received in evi-
23308 dence.)

Q. Can you explain the circumstances under which that was written, Mr. Coogan?

A. This is simply a letter of instructions to our sales department instructing them that we will not sell dealers located in one town, for delivery to another town, except to our trade at our consumer price. We make the exception of towns located within practical trucking distance of the other dealer's town. Now, the application of that particular letter applies only to a part of western Pennsylvania. I think that there must be another letter probably at some other time applying it in other territories or at some time near this.

The witness identified Resp. Ex. 524 as a letter on Alpha letterhead, dated July 26, 1917, with which he was familiar.

Mr. Leisure: I offer in evidence Respondents' Exhibit No. 524 for identification.

23310 (RESP. EX. 524 was offered and received in evidence.)

23314 Q. Mr. Coogan, when we adjourned we were discussing Respondents' Exhibit 523, with reference to the subject of diversion.

I notice that that exhibit is addressed to your sales department and salesmen.

Will you explain the use of that, please?

A. Well, this is a letter of instructions from me to our sales department and interested salesmen, dated March 17—

Q. (Interposing) Does it have anything to do with diversions, Mr. Coogan?

A. No, sir. It does not.

23315 Q. At the time this letter was written, what were the circumstances as to the subject of diversions in your company?

A. Well—

Q. (Interposing) In other words, what was the purpose of that letter?

A. The purpose of that letter—

Q. I am referring to the exhibit which is Respondents' Exhibit No. 523.

A. The purpose of that letter was to not quote a dealer

outside of his home markets, but it does not refer—that is this particular exhibit does not refer to diversions.

It would naturally be construed that these had something to do with it, but as a matter of fact, we didn't want our customers in one market to buy cement and have it shipped into another market and interfere with our regular dealer connections at that particular place.

Q. You say you didn't want that; why, Mr. Coogan?

A. Because it interfered with our dealer relations, and once in a while you will probably have exclusive arrangements, and other things of that sort.

Furthermore, a person shipping into a market where he has no investment and no facilities to serve the public—we felt that that was unfair to the people who do
23316 maintain regular facilities for serving the public in those particular markets.

The witness identified Resp. Ex. 525 as a quotation
23317 of the Atlas Portland Cement Company, dated November 22, 1921, to a dealer at Robbinsville, New Jersey; Resp. Ex. 526 as an Atlas quotation dated November 22, 1921 to a dealer at Yardville, New Jersey.

Mr. Leisure: I offer in evidence, if your Honor please Respondents' Exhibits Nos. 525 and 526 for identification. There is also certain material on the back of each of these exhibits, and I am offering the entire exhibits.

As I understand your Honor's ruling, the entire exhibit may be considered.

23318 (RESP. EXS. 525 and 526, were offered and received in evidence.)

The witness identified Resp. Ex. 527 as a letter dated August 24, 1918 written by him to Alpha's sales department.

23319 (RESP. EX 527, was offered and received in evidence.)

Q. Mr. Coogan, I note in the third paragraph of this letter, Respondents' Exhibit 527 for identification, you state:

"Such contracts cannot be accurately investigated as they usually cover only optional quantities and when such contracts are taken through dealers, it makes it possible for the dealer to divert shipments from such contracts to other work. This makes it possible for the dealer who may

abuse such contracts to underbid his competitors, on any new business that comes up in his town."

Will you explain under what circumstances you made that statement in this letter?

A. Let me see that again, please.

This refers to contracts with concrete product plants, municipal, county or State requirements, which might be sold through dealers, and informs our sales department that we will not protect this business through dealers except for fifteen day shipments, or for a definitely definable job, and then goes on to state our reasons for putting in such a rule.

23320 Q. Well, was it your regular policy at that time as you have stated here in your letter, or was this just something exceptional or unusual?

A. No, that was a policy which we put into effect generally at that time.

Q. This was merely one stage in the development of that policy, then?

Q. Now, at the time you wrote this letter which is dated August 24, 1918, did you have any policy against diversions in transit?

A. Oh, yes, we have had that since 1910 or 1911, since considerably prior to that date.

23321 Q. Mr. Coogan, I show you Respondents' Exhibit No. 528 for identification and ask you to tell us what it is.

A. Respondents' Exhibit No. 528 for identification is a circular letter issued by the Lehigh Company from their Allentown office, dated May 1, 1929.

Q. How did you come in possession of that, please, sir?

A. It was sent in to us by one of our customers.

Q. And can you identify Respondents' Exhibit No. 529 for identification?

A. Respondents' Exhibit No. 529 for identification is a letter, a circular letter, issued by our office on May 3, 1929.

23322 (RESP. EXS. 528 and 529 were offered and received in evidence.)

Q. Mr. Coogan, will you look at Respondents' Exhibit No. 528, and tell me if you know what use, if any was made of that when it was received?

A. This is a circular letter from the Lehigh Company notifying their customers that on account of the very low prices which were being quoted by them in the Boston and Providence market to meet foreign competition, that the invoices—

23323 Trial Examiner Norwood: Now please answer that with reference to the use you made of it.

The Witness: After we received this circular and found out the way the Lehigh company were handling their business in those depressed market areas, we decided that we would issue a similar rule to handle shipments in the markets which had been referred to therein.

Trial Examiner Norwood: Is that a statement—is that exhibit a statement of policy as to dealers?

The Witness: No, sir. That is a statement of policy as to invoicing dealers for cement.

Trial Examiner Norwood: I see.

By Mr. Leisure:

Q. And you have explained the method that was used, have you, Mr. Coogan?

A. I think that I did. I think I explained that in 23324 connection with our present method of invoicing, but I would say that there had been exceptions at certain times where we had included the freight with the invoices and accepted the freight bill in part payment of the invoice.

Q. The circular referred to as Respondents' Exhibit 529 is dated May 3, 1929.

Is this the first time that your company adopted such a policy?

A. We have had that policy at intermittent times in different localities for different reasons. Now, of course, the principal reason is to prevent the man or the customer from purchasing cement at a point where we might have an artificially low price and then diverting that cement to a point where our price is higher than at that station.

Q. To your knowledge, did you or any representative of your company have any agreement with the Lehigh company to use this method to prevent diversions?

A. No, sir. I did not.

Q. And if there had been any such arrangement or understanding, in your position, would it have come to your attention?

A. Yes, sir. It would have been absolutely necessary for me to have known about it had there been any agreement to that effect.

23325 Mr. MacIntyre: If your Honor please, I think in that case, where the word "agreement" is so loosely used by counsel and by the witness, that we ought to know whether it means a signed and sealed document, or what they are talking about.

Trial Examiner Norwood: "Agreement" is a perfectly simple and easily understood word.

There is nothing there which you cannot go into on cross-examination.

Mr. Wooden: Especially so, when it is preceded with the word "any".

Trial Examiner Norwood: If you do not fully understand it, you can take that up and take care of it when you come to cross-examination.

By Mr. Leisure:

Q. I would like to ask you the same question with reference to not only the Lehigh company, but with reference to your other competitors, to save time and without going through the long questions, do the same answers apply to your other competitors, as well as the Lehigh company?

A. I don't know what competitors put this particular ruling into effect.

Q. I am talking about your relationship with them, whether or not you ever had any such understanding or agreement?

A. I did not.

23326 Q. With any other of your competitors?

A. I did not.

Q. Now, Mr. Coogan, I would like to call your attention here to Commission's Exhibit No. 136, particularly No. 136-U; the particular page at which I wish to direct your attention is designated "X".

Trial Examiner Norwood: Is that the Commission's exhibit?

Mr. Leisure: Yes, if your Honor please, it is Commission's Exhibit 136 with some letters.

Trial Examiner Norwood: All right.

By Mr. Leisure:

Q. That exhibit, Mr. Coogan, appears to be the minutes of a meeting of the Cement Institute held on December 13, 1929.

It states, "In connection with the code of ethics of the Cement Institute, it is recommended that to prevent diversions no freight allowance be shown on manufacturers' invoices, and that a notation should appear on all invoices that freight allowance does not appear on invoice, and that receipted freight bill will be required as part payment of the invoice."

Now, the minutes also show that you were present at this meeting, Mr. Coogan.

Will you please state the circumstances, if you know, under which this resolution was adopted?

23327 A. Well, I only know what is stated in there, so far as the adoption of the resolution is concerned. I do know that in so far as the Alpha company is concerned, they never followed that resolution in any sense of the word, and the only place for many years that we ever have asked that the freight bills be surrendered, is where we had artificially depressed prices to meet foreign competition and—

Q. Mr. Coogan, to bring your mind back to the matter in hand, after that meeting I will ask you did you change your practice, or did the Alpha Portland Cement Company change its practice in anyway in connection with your freight rate bills?

A. We did not.

23328 Q. To your knowledge, did you or any representative of your company have any understanding with your competitors as to in what territory you were going to follow that practice?

A. No, that was entirely our own action, as to where we put that into effect, or if or whether we did put it into effect.

Q. Now, what is the situation today, Mr. Coogan; do you follow that practice anywhere today?

A. Today we do not follow that practice any place.

Q. You mentioned a moment ago these depressed prices in certain areas, when you had those prices in effect in New York and Boston, metropolitan markets, up to—well, say July of 1938, did you follow the practice here referred to?

A. No, sir. We didn't.

I might add, to clarify that, at the time we applied this in Boston and Providence, we used our depressed prices only in those particular markets, and did not touch the outlying markets, and the dealers getting cement in those markets could divert the cement if they were smart enough to do it, whereas in the latter part when we had depressed prices, at both Boston and New York, those prices were what we called "feathered out"; so that the same competitive or commercial conditions did not prevail when we had the same prices in 1936, 1937 and 1938—I think it was—as applied in the 1929 markets.

23329 Q. As I understand that, your testimony, you have not followed this policy for some years?

A. We have not.

Q. Mr. Coogan, do the contract or quotation forms now used by your company contain any clause pertaining to diversions?

A. Yes, the contract forms do provide a prohibition against diversion. In fact, they contain a prohibition about both classes of diversions; that is, diversions from the use, and also diversions in transit.

Q. Which of your contracts provide that?

A. Well, we only enter into contracts for what we refer to as a specified job, or for delivery of cement requiring future delivery.

Our spot business, or what we call fifteen-day business, is just handled without an agreement of any sort, except an order.

Q. Is the specific job memorandum of agreement, the only contract or quotation used by your company that contains a clause pertaining to diversions?

A. Yes, I think that is the only form that con-
23330 tains such a prohibition.

Q. When did you first begin to include this clause concerning diversion from one destination to another in your memorandum of agreement?

A. I couldn't say just when that was put in. It has been in there for some time, in one form or another, but I couldn't remember now just when that was put in.

23331 Q. Will you tell us how many forms of contract you have that clause in?

A. Only one form. We have only the one form.

As I remember it, there has always been a notation on

our job contracts as to diversion, and I think under the N. R. A., there were submitted certain forms providing a prohibition against diversion in transit, and that was added to all our forms at that time.

There were certain forms outlined and provided with the Code, and we simply adopted their language.

Q. Then following up Mr. Paulson's point, and the fact—did the fact that you changed your memorandum of agreement from the form previously used indicate that your policy with reference to diversions was in any way changed?

23332 A. Not at all, no. We always maintained that either under a spot shipment or under a contract shipment, if it was diverted to another town, the customer had violated the terms of sale and we could recover.

Trial Examiner Norwood: And you used that restriction in case of shipments to dealers?

The Witness: No, we have nothing but an order in case of shipment to dealers, except on specific jobs.

Trial Examiner Norwood: Didn't you have a bill of lading provision that covers that provision against diversion in transit?

The Witness: Yes.

Trial Examiner Norwood: You used that, didn't you?

The Witness: Yes, we have used that since it was approved by the American Association of Railroads, and it has been used in other industries for a long time prior to our use of it.

By Mr. Leisure:

Q. Now, Mr. Coogan, was there any agreement or understanding, to your knowledge, between your company and any of your competitors with respect to the use of this clause in your specific job memorandum or agreement?

A. Well, only the agreements imposed upon us by the Code, for that part of it which we added during the Code period.

23333 Q. I mean, other than that.

A. Oh, no, there has never been such an agreement of any sort.

Q. Would you have known of it if any such agreement had been made with your company?

A. Yes, most certainly I would have.

Q. Between your company and any of your competitors?

A. I would have known it, yes.

Q. And you testified there was none?

A. No, sir. There was none.

Q. You mention the N. R. A. Since the N. R. A., have you changed the language of your memorandum agreement?

A. No, we have continued to use the same forms that we were using after the Code.

Q. Have you retained and continued the language in your memorandum of agreement which was adopted under the Code by reason of any agreement with your competitors to do so, to your knowledge?

A. No, sir. We have not.

Q. Do you have any clause in your quotation form—in your contract form which states that you reserve the right to determine the route by which shipments shall be made?

A. I think there is.

Q. Is the purpose of that clause to prevent diversions?

A. No.

23334 Q. Well, Mr. Coogan, suppose you tell us the purpose of that clause?

A. The purpose of that clause had nothing to do with diversions.

The purpose of the clause was to keep the movement in our own hands to insure we could ship over the route carrying the lowest rate of freight, and also that we could spread the tonnage over railroads in a way that might be the best in a reciprocal way for us.

As a matter of fact, the imposition of that clause does not stop diversions except in a few scattered cases.

Q. Something was said a while ago about stamping. I want to ask you now, does your company have a practice of stamping bills of lading with a clause forbidding diversions?

A. We do. We stamp the bills of lading with a stamp prohibiting diversions.

Q. When did you begin to use that stamp?

23335 A. I can't give you the date. Our traffic department had that up and was informed by the traffic managers of various railroads that the use of the stamp had been approved by the American Association of Railroads, and after we got that information, we started using it.

Q. Again I will ask you whether you had any understanding or agreement with competitors that you would adopt that stamp?

A. No, sir. We did not. There was a great deal of conversation between the traffic men of the various cement companies regarding the use of such a stamp—there is no question about that—but there was no agreement.

The stamp had been previously used in another large industry and it worked out with reasonable success and we felt that it was simply a sort of insurance to help us prevent diversions, and we started using it.

Q. Did your company learn—did your company ever learn that other companies had adopted that stamp?

A. Yes, sir. We did, from time to time.

That was learned from conversations of both myself and our traffic men with competitors at various times.

Q. After you had delivered cement to a customer, do you know, or have you ever attempted to exercise any control over his use, or his place of use, of that cement?

23336 A. No, we do not assert or attempt to assert any control over shipments that are bought and paid for by any customer, except for cement which we have furnished for a specific job on which we have a contract obligation.

Now in that case, we insist that the cement not be diverted from the original use for which it was purchased.

23337 Q. And these places where you have selected your offices, and where they have selected theirs, are they or are they not in the larger areas where you do business?

A. Oh, yes, they are naturally in the larger centers of distribution.

Q. So that, do you or do you not have almost daily contact in that way with your competitors, so far as being in the same cities is concerned?

A. Well, no, I don't have daily contact with them.

Of course, in going to and from the offices on the trains you will undoubtedly at times meet some or many of your competitors. Very often at lunch your will meet them, and in different spots you will meet them in clubs, sometimes.

23338 As a matter of fact, those near our homes, we might very often happen to meet them, but so far as having any set meetings is concerned, we do not have

that, except in so far as such meetings as, for example, I will see them at the Portland Cement Association meetings, and I have seen them at Institute meetings, or at other meetings that might be called for similar purposes.

I have contacted some of my competitors on committee work of various kinds.

Q. At these contacts that you have described, do you discuss industrial problems?

A. Well, it is the most natural thing in the world, when two or three cement men get together, to discuss your industry problems and I want to be frank in saying, that of course, our industrial problems and our commercial and competitive conditions are talked about between us. It is perfectly natural that they would be, and I don't know of any way to prevent it.

Q. Do you discuss marketing policies and prices?

A. I should say that if the conversation happens to go on the question of marketing conditions, and that matter comes up and/or the matter of prices, also, they are sometimes discussed, I suppose, but so far as I am concerned, I have always made it a point and a rule to confine my conversation to what has happened in the past and
23339 to not in any way involve the company in anything that they might do in the future, either as regards prices or terms or policies or anything of the kind.

Q. Do you exchange information on policies, prices, and market conditions?

A. Oh, no, I don't mean that.

Somebody may have some information that he will pass along to me, or I may have some that I will pass along to the other fellow, but so far as exchanging prices is concerned—usually when we get together with any of them, the matter of the detail of prices is not talked about at all. We usually do not even know the details.

Q. What I had in mind was, do you discuss with them the particulars of particular bids on Government or large contracts where the bids are going to be opened?

A. No. We do not. No, I have stated clearly that I do not discuss with competitors anything except what has happened in the past, and certainly I do not ever discuss with them prices, terms, or conditions on any business which we may be going to quote on in the future.

Q. And are you in a position to state, Mr. Coogan, whether or not what you have just told us with reference

to your personal policy as to that, are you in a position to tell us whether that is the policy of the other executives in your company?

23340 A. Well, I know that the other executives in my company would not discuss anything different from what I would discuss.

I know that we have a company policy on that and we live up to it.

Q. Have you ever had any understanding, to your knowledge, or any agreement with any of your competitors concerning your prices or marketing policies?

A. No, sir, we have not. We have always been free, entirely free to do as we pleased with reference to our prices, terms, and conditions of every sort.

Q. Would you, or would your not, say that the subject of prices is or is not a matter of public information?

A. Well, I think the public knows the prices on cement just as well as the manufacturers. There is no secret about it, anybody can learn it, you can go along the street or go into any building material dealer's and can get the price which any particular company is quoting in that market.

Q. In your experience, Mr. Coogan, for how long a time would you say that that condition has obtained?

A. That condition has obtained for more than twenty-five years.

In the early days, it wasn't a matter of so much common and public knowledge as it is today, but as soon as competition developed, most companies sent out these

23341 periodical quotations and it became a matter of general public knowledge.

Q. Now, will you tell us, during your long experience, whether or not it has been your observation and knowledge that your company and your competitors both broadcast your quotations and prices to your dealers and customers?

A. Yes, that has been done for more than twenty-five years.

Q. And before I leave that subject, would you say that the same thing is true as to marketing practices, marketing policies?

A. Yes, the same thing is true of any marketing policy, and particularly those that affect dealer distribution, because in the cement business the principal factor in the

distribution of cement has been the dealer business, and if one company broadcasts a policy which is acceptable or more liberal to the dealers than another policy that one of his competitors might have, you can make up your mind that the other competitors are going to change pretty darn quick.

They must do that to hold their trade. At least ninety per cent., and at one time probably ninety-five per cent. of the business was handled through dealers. It is true there has been a certain trend away from the dealers in recent years, and that in the past five or six years there
23342 has been more Governmental buying, which has decreased the proportion handled through dealers, but by far and large, even at the present time the principal factor in the distribution of cement is the retail building supply dealer.

Q. Now, I would like to take up another subject, Mr. Coogan.

I want to call your attention to Commission's Exhibit 557, which is the N. R. A. Code of Fair Competition for the Portland cement industry approved by the President on November 27, 1933.

Will you please look at page 337 of that exhibit, under article 9, section 4, which bears the heading, "Manner of procedure on price changes."

Do you find that?

A. Yes, sir.

23343 Q. After you have looked at that and referred to it, will you tell us what the policies of your company were at that time with reference to that provision?

A. This provides that in the event a company reduces its price, that company will make such reduction retroactive for a period of five days previous to the date of such reduction.

As far as our company was concerned, when the Code went into effect, we adopted that policy.

Q. What was your policy prior to that?

A. Prior to that we had handled each and every case on its own merit.

We must, of necessity, in the event we reduce our prices, give that lower price on all shipments that are en route and have not reached their final destination, and been unloaded by our dealer.

We quote a delivered price, and if we do not do that,

the customer can refuse the shipment, and so prior to that, we had a rule that whenever a car had not reached its destination, we made the reduction in price effective as to that shipment.

Q. Now, when—

A. (Interposing) We had to go further than
23344 that in some cases where we found it done by competitors, and I have heard of some competitors who had even applied such reduction to stocks on hands in the dealer's warehouse.

In our own company we tried not to do that, and I think we succeeded; so that we had no hard and fast rule, and handled each case as we felt best, except that we did, under all circumstances, allow the reduction on shipments that had not reached their destination and been unloaded.

Q. Let me call your attention to Commission's Exhibit No. 560, and ask you whether or not the amended Code carried any such provision?

A. I think it did carry such a clause, but I have not been able to find it yet.

Q. Look at page 14 of that exhibit, Mr. Coogan.

A. Yes. Yes, this carries the same provision.

Q. Let me ask you, did the Alpha company follow these provisions as provided by the Code?

A. Yes, after the Code went into effect, instead of handling each and every case on its own merits, we adopted the flat rule of giving the reduction on all shipments made five days prior to the date of such reduction.

23345 Q. Mr. Coogan, what have you to say, if anything, in your experience, as to the practice of making price declines retroactive in all cases five days prior to the date of the reduction as provided for in the N. R. A. Code?

A. Well, I think it is a perfectly clear provision and protects both the manufacturer and his customers. As I have said, before each case was handled which means that sometimes you went beyond the five days. The thought back of this thing, as I understand it, was that within five days, generally speaking, all shipments had had a sufficient time to reach the destination and be unloaded into the dealer's warehouse.

Mr. Leisure: I ask permission to have marked for identification a quotation of the Alpha Portland Cement Company, dated July 1, 1922.

Trial Examiner Norwood: It may be marked.

(The document referred to was marked "Respondents' Exhibit 530," for identification.)

By Mr. Leisure:

The witness identified Resp. Ex. 530 as an Alpha quotation, dated July 1, 1922, to Moir & Co., Stuart, Vir-
23346 ginia. The handwriting in ink is in the nature of a letter to Alpha written by the dealer to whom the quotation was sent.

Q. Do you know whether or not that was a periodic quotation or whether it represented a change in your Alpha Portland Cement Company's price at that time?

A. Well, from this quotation I think it indicates a reduction in price of ten cents.

Q. Now, you say the writing on it is in the nature of a letter?

A. Yes, sir.

Q. Did you take any action with respect to that letter, or notation?

A. Yes, sir. We did.

Q. What?

A. Well, we sent a credit to Moir & Company, covering the difference between the invoice price at which we had billed them for cement, and their quotation, because
23347 their letter to us stated that they had just received a car of cement and it would make it pretty hard for them to market it in competition with other dealers, so we allowed them a lower price, even on that car of cement which had been received and unloaded by them in their warehouse at that time.

(RESP. EX. 530 was offered and received in evidence.)

Q. Was this an exceptional situation, Mr. Coogan, or does that illustrate the situation which occurred on decline in price prior to the adoption of this five-day retroactive period?

A. Well, I think that demonstrates the way we handled the matter prior to the time we adopted that feature in the Code.

23351 Q. Will you identify Respondents' Exhibit No. 531 for identification, for the record?

A. Respondents' Exhibit No. 531 for identification is a quotation made by the Alpha Portland Cement Company on August 16, 1922.

Q. Can you tell me whether it represents the first time your company adopted the policy of giving advance notice of their prices?

A. Yes, this quotation form bears a space in which that date is to be filled in and I note that on here. I know that we adopted that policy some time in 1932, August, 1932.

23352 Mr. Leisure: I offer this in evidence. Is there any objection?

Trial Examiner Norwood: Any objection?

Mr. Wooden: No objection.

Trial Examiner Norwood: It will be received as marked.

(RESP. EX. 531 was offered and received in evidence.)

Q. What has been your policy prior to that time, Mr. Coogan?

A. Prior to 1932, theoretically we made our prices effective immediately when we advanced the price. As a matter of fact, if a dealer mailed us an order even after he had received the quotation, we would very often, and — in fact, usually accepted such an order so that, 23353 while we had a theory that our quotations were only for immediate acceptance, as a matter of fact we would accept orders and did accept orders after our new prices theoretically became effective.

Q. What was your observation, at that time you told us about what you did, with respect to that period or from the Summer of 1932 and the effective date of the first N. R. A. Code, do you recall or do you know whether your competitors made price advances effective five days after date of its announcement?

A. I only have positive knowledge of our own company. We were doing that. I think I do know, of positive knowledge also of one other company that did that, too. I think there may have been other companies. The Lone Star Cement Company had that provision in their quotations for probably two years before we adopted it. As to other companies, all I can tell you is from our field reports that they always accepted as much business and allowed the dealers and their customers to stock up with cement at the price in effect previous to the advance.

In fact, in our own company, while that was the policy, it was not adopted until 1932, after we came in competition with the provisions set down by the Lone Star Company. I will be frank in saying that we perhaps became a little

more liberal in our own policy until such time as
23354 we adopted the hard and fast rule.

Mr. Leisure: I would like to have marked for identification a letter dated February 8, 1930.

Trial Examiner Norwood: It may be marked.

(The document referred to was marked "Respondents' Exhibit 532," for identification.)

The witness identified Resp. Ex. 532 as a letter dated February 8, 1930 from Alpha's Washington, D. C., representative to the company's Easton, Pa. office.

(RESP. EX. 532 was offered and received in evidence.)

Q. Again referring to Respondents' Exhibit No.
23355 532 in evidence, Mr. Coogan, can you tell us whether this was the first occasion that you noticed a competitor giving five days' notice on an advance policy, where there had been a price advance?

A. No, sir. We have had it from many other sources and from many other parts of the country. It is the same kind of complaint that we got from many of our other men in the field.

Q. Then, from what you have said, Mr. Coogan, when the N. R. A. Code came into existence, was there or was there not any necessity for your company to change its practice in that respect?

A. No, we did not need to change our practices.

Q. I think you told us that you continued it after the Code?

A. Yes.

Q. Have you continued it up until the present time?

A. Yes. We are still using it.

23356 Q. Does that letter represent any new policy on the part of your company, referring to Respondents' Exhibit No. 533 in evidence?

A. Well, it represents a new policy in the fact that from that date, or about that date on, we allowed the full
23357 five days from the time of our quotation regardless of the effective date of any other quotation.

In that respect it is a new policy.

Q. Now, Mr. Coogan, in your experience, having told us what your practice was, what has been your experience with respect to your competitors, have you ever observed whether or not they have adopted any similar policy?

A. I do not know what all of my competitors have done. I know that during the Code of course they provided the

five days, but I think the language of the Code provided for five days from the effective date of the price, regardless of when they sent out their quotations.

Now, I can say that the result in our own company since the change to the full five days' notice has not been one bit different from what it was, as when we made our prices effective on the same date, and from the first announcement that you have made a change, because you can always rest assured whether you make out your forms so that it is only one or two or five days, your customer is going to follow up and fill up on cement, and he will cover in the meantime all of the jobs which he possibly can, some of them will probably not be legitimate jobs, but he will have himself pretty well covered for deliveries of cement into the future. And that holds good whatever date it is. If it is one day or another, it does not make much difference.

23358 However, we decided to give full five days' notice because we realized that we never got the benefit of a price increase for many months after that increase in that price so that we felt another day or two would not make any difference.

By Trial Examiner Norwood:

Q. Does that stimulate orders?

A. When we give this five days' advance notice, Judge, we allow the customer or the dealer, during that five days, to place with us any orders which he may want shipped during the subsequent fifteen days. Now, that gives him twenty days in which to stock up in his warehouse.

We also give him the privilege of closing on any specific job contract forms any jobs on which he is expected to furnish cement requiring future delivery.

We give him that privilege on all jobs on which the bids had been open within fifteen days of the date of the advance.

Now, you can rest assured that he has ample time to and does protect himself on all the cement that he will use for some little time.

Q. Mr. Coogan, I would like to direct your atten-
23359 tion to August, 1929, and ask you whether or not the Alpha Portland Cement Company changed its base figures at that time?

A. Yes. In August of 1929, the Alpha Portland Cement

Company instituted reductions in prices at their mills in the Lehigh Valley, in the south, and in the Middle West. Those reductions are from ten cents to thirty cents per barrel.

Q. And will you explain the circumstances under which this change took place?

A. Well, there had been in some sections of the country several reductions in prices by various companies.

The president of our company decided very suddenly one morning that we should reduce prices. Now, our other vice president and myself tried to dissuade him from that decision, tried to change it, because we did not think conditions warranted a reduction in price at that time. We were unsuccessful and we had absolute instructions to send out quotations so that we notified our offices and we did send out quotations showing this reduction.

As I remember it, it was thirty cents for the Northeastern section of the country, twenty cents in the Middle West, I refer to LaSalle and St. Louis, and ten cents in Birmingham.

Q. You stated some of the circumstances. Were 28360 there any special conditions which caused the Alpha Portland Cement Company to make such a reduction at that time?

A. Well, in my opinion and in the opinion of Mr. Irvin, who was our vice president, the conditions at that time did not warrant it, but however we were overruled and we were instructed that we should send out the quotations on that basis, and these instructions prevailed.

I know of no special conditions at that time, except the same conditions which have existed in the Southeastern sections of the south, for several months prior to that reduction in price.

Q. Let me call your attention to Commission's Exhibit No. 1174-A, Commission's Exhibit No. 1174-B, and ask you whether or not—well, the whole exhibit, Commission's Exhibit No. 1174-A to 1174-O, and ask you whether or not this is the statement of Mr. Brown, to which you have just referred.

A. Yes. I remember looking at this exhibit. I do not agree with Mr. Brown's statement as to this reduction in price having any effect whatever on trucking.

I do not see how the matter of price could have any effect on trucking.

Q. I notice here, Mr. Coogan, in a copy of this exhibit, Mr. Brown is reported to have referred to price changes by other companies in September, 1929.

What is your knowledge as to that, if anything? Did the price changes referred to there in September, have any effect on it?

23361

A. I do not see how a price that was changed in September, 1929, could have any effect on our decision to make a reduction in August, 1929, unless we could see in the future. That is the way I look at it. I know there was some reduction which took place in September, 1929, whereas our reduction occurred in August, 1929, so I do not see how that could have been the controlling factor.

Q. Aside from these two things which you have mentioned, Mr. Coogan, do you concur in Mr. Brown's statement in this document?

A. Well, I have not read the statement over in detail. Those are the two particular things that I picked out, with which I do not agree.

Q. I see.

A. That is right.

23363

Q. Now, prior to the announcement of these quotations, to your knowledge, did you or any of your executives inform any of your competitors of your intended action?

A. No, sir. We did not. I can state that positively because I personally did not know it until I was told to make it effective.

23364

Q. Now, what was your observation, if anything, as to the practical result of this price reduction in August, 1929?

A. The practical results were not satisfactory. We did not succeed in getting any larger volume of business and so far as my observation goes, I did not see any particular change in the trade conditions or in the competitive conditions and we went along just as we did before, except that we went along with the price of twenty cents per barrel lower than we had prior to August 24, an average price of twenty cents lower.

23367

Q. Mr. Coogan, will you please identify Respondents' Exhibit No. 536 for identification?

A. This is a quotation, dated November 22, 1929, by the Lawrence Portland Cement Company to a dealer at Belle Mead, New Jersey.

Q. How did you come into possession of it?

A. It was sent in to us by the customer whose name appears on the quotation.

Q. Did your company act upon this in any way, and if so, what?

A. We acted eventually. I think as I remember it, our quotations went out either on the twenty-fifth or the twenty-sixth of November.

This quotation represents an increase in the price. I do not recall the amount, but I think in this particular section, that it was thirty cents a barrel, and in fact it meant a restoration of the price which had been in effect prior to the reduction which we made in August, 1929.

23368 (RESP. EX. 536 was offered and received in evidence.)

Q. Was this a general increase in price, Mr. Coogan?

A. Well, this quotation, of course, indicates an increase in price only as to this vicinity.

Q. I mean as to your own explanation.

A. Yes, from memory I know at that time there was a general increase in price.

Q. If it were a general increase, as you have said, do you know at that time what company initiated it?

A. Having this quotation, I am quite sure that the first information that we got of it was the Lawrence quotation, which we found in that field.

By Trial Examiner Norwood:

23369 Q. Whose quotations were those?

A. Lawrence Portland Cement Company.

By Mr. Leisure:

Q. But if you can recall, what was the decision of your company when you learned of this price increase?

A. After we found these quotations in the field, we had quite a discussion with our president and we were able to convince him that the reduction in August had not had the result which he had hoped it would have, and that we were able to get his permission to go ahead and take advantage of our competition, and follow the prices which had been set up by the Lawrence Portland Cement Company, and at the time we discussed it with him, there were quotations which had been made by several other companies.

We were delayed because it took us a little while to discuss this matter in our own organization and decide what action we were going to take.

23370 The witness identified Resp. Ex. 537 as a Lehigh

quotation, Birmingham office, dated November 23, 1929, quoting the price at Birmingham, Ala.; Resp. Ex. 538 as a Lehigh quotation, Chicago, Illinois, office dated No-
23371 vember 23rd, quoting the price at Knoxville, Tennessee; Resp. Ex. 539 as an Atlas quotation, dated November 23, 1929, quoting a price for delivery at Mt. Vernon, New York.

Q. How did you come into possession of those documents?

A. All of these documents were turned over to our salesmen by the dealers whose names are shown there, and sent to our Eastern office by the salesmen.

(RESP. EXS. 537, 538, and 539 were offered and received in evidence.)

23372 The witness identified Resp. Ex. 540 as a copy of a memorandum to him from Alpha's chief clerk in the sales department, advising as to prices they had found in the field at that time; Resp. Ex. 541 as a letter from Alpha's sales department, dated November 25, 1929 addressed to the various officers and salesmen, advising them of a change in Alpha's price; Resp. Ex. 542 as a
23373 letter dated November 26, 1929 to Alpha's Chicago office, advising them of a change in Alpha's price.

23375 (RESP. EXS. 540, 541, and 542 were offered and received in evidence.)

Q. On what date did you send out the Alpha Portland Cement Company's quotations, Mr. Coogan?

A. As it appears on these papers, we sent out part of these quotations on November 25, and some of them on November 26, 1929.

Q. Before I leave this exhibit No. 542, Respondents' Exhibit No. 542, I notice that it is addressed to the Chicago office.

Can you explain that?

A. Yes, we kept the Chicago office fully advised of any moves which we might have made in any section of the territory, because our Chicago office was more or less of a general office and was kept posted on whatever went on in the industry wherever it happened.

Q. Even though these only affected the eastern basing points?

23376 A. That is correct.

Q. Now, Mr. Coogan, to your knowledge was the decision of your company to follow this price increase, the

result of any understanding or agreement with any of your competitors?

A. No, it was not, and I would certainly have known it if it had been.

As I told you, I was very glad to have the opportunity of an excuse for advancing our prices because I had been so unalterably opposed to the reduction which was made by our company in August.

23377 New York, New York,
September 15, 1939.

23378 F. M. COOGAN was recalled to the stand and testified further as follows:

Direct Examination by Mr. Leisure (Continued).

Q. Mr. Coogan, before we go on this morning, I think, with a new subject matter, I would like to call your attention to Commission's Exhibit 96-B, which is an inter-office memorandum of the Aetna Portland Cement Company, bearing no date. It appears to refer to the period around March of 1937.

The writer here says that on March 15, the price of cement at Ironton, Ohio, was increased ten cents per barrel and it would have been increased more if the Toledo base had gone up.

It points out that the Cape Girardeau base went from $1.80 to $1.95; then it goes on to say:

"There is a very decided movement on foot for the raising of the base at Buffington, Indiana, all of the La-
23379 Salle mills, and a general increase through the Middle West."

Do you recall having increased your base at Ironton, in March of 1937, ten cents per barrel?

A. We increased out base from the Ironton mill sometime in 1935.

Q. Did it have any relation to the base at Toledo?

A. Yes, as I was going on to say, as I remember this exhibit, there was a reference in that to a change in our base figure at Manheim, having the same reference to the base figure at Toledo.

The Witness: I meant to refer to Ironton and Toledo.

It would not have taken a very smart man to have figured out if the price was raised at Ironton any higher, the Toledo base would have made the price at Ironton—in other words, it would have been tantamount to raising—it would have had the effect of completely removing the Ironton base, so we raised it as much as we could there, and that covered some territory.

As to things contemplated at LaSalle, I know noth-
23380 ing about those statements, and I think the future occurrences prove how wrong the writer of this memorandum was, because as I remember, some time during the middle of 1937, or the latter part of 1937, there was an advance made by a company with a mill at LaSalle, Illinois, of ten cents per barrel, but as far as the Alpha Portland Cement Company was concerned, we never followed that price, and after that company, or those companies, who had put it in, held it for a certain length of time, they withdrew it.

By Mr. Leisure:

Q. When you raised your base at Ironton, did you take into consideration the bases at other points in the territory?

A. Naturally. I think I explained that we did take that into consideration because had we made it any higher, it would have completely removed that base.

Q. I wanted to get that clear.

Referring again to the memorandum which I gave you, as to the statement that there was a movement on foot, did you know that there was a movement on foot to raise the base at Buffington and LaSalle?

A. No, sir. I didn't, and I think that is demonstrated very clearly, that while such an advance did appear later on, our own company never followed it.

Q. You have a mill at LaSalle?

23381 A. We have.

Q. You say there was subsequently a raise there. Can you give us the date of that, you said you subsequently raised the base at LaSalle.

A. I didn't mean to say we did.

Later on, some time in the latter part of December of 1937, or sometime about then, we did increase our base figure at LaSalle, but the price had been raised there by one of our competitors, oh, many months prior to that time, and we didn't follow that and it was withdrawn.

23384 The witness identified Resp. Ex. 546 as a dealer periodical quotation which Alpha used from September 1918 through April 1919.

23385 (RESP. EX. 546 was offered and received in evidence.)

Q. Mr. Coogan, on Exhibit 546, there is a provision in which you provide for retaining title to the cloth sacks whereas in these earlier exhibits, Respondents' Exhibits Nos. 543, 544 and 545, they all provide that the bags were sold and repurchased.

A. Let me see those other three, please.

Q. Yes, sir. Here they are.

Look those over and see if you can tell us about that.

A. Yes, Respondents' Exhibit No. 545, which was a specific work quotation form—we placed what we call the leasing arrangement on bags on that form but we did not at that time put it on our ordinary dealer periodical quotation forms, and then in September we changed our dealer periodical quotation form and included in that our leasing arrangement for bags.

Prior to that time, when we sold the cement, the bags
23386 had been sold with the cement and then there was a repurchase arrangement whereby we took them back from the customer at a stated sum.

During this period we had a great deal of trouble, there was a great second hand market for cotton bags and there were a great many bags which went from our dealers to the second hand men, and the second hand men would buy them at a price higher than our repurchase price, and we were not getting our bags back, and when we went to buy new bags, we had to pay higher prices for them.

So, on that, we consulted our attorney and developed a plan, and he wrote this leasing agreement for us, and thereafter we included it on all our quotations and memoranda agreements and everything else.

That provision provided that the company retained the ownership of the bags.

23387 Q. Was there any advantage or disadvantage to the buyer in connection with this leasing arrangement? In other words, what was your reason for that?

A. The reason that we put that in there was to protect the company from abuse of our sacks and as far as I can see, there was no hardship on, or no advantage, to the honest dealer.

23388. Now to the man who had been selling on sacks to other places, it would mean he could no longer do that, because we retained the ownership of the sacks.

I don't see that it made any great difference to them, especially when you take into consideration the change in the redemption value from ten cents to twenty-five cents.

The witness identified Resp. Ex. 547 as a quotation form used for quoting specific jobs either through dealers or to consumers, which Alpha used from September 1918 to April 1919; Resp. Ex. 548 as a periodical quotation form which was in use by Alpha on April 2, 1919; Resp. Ex. 549 as a specific job quotation form which was used by Alpha on April 2, 1919.

23389 (RESP. EXS. 547 548 and 549 were offered and received in evidence.)

Q. Now, I notice on these last three quotations, being Respondents' Exhibit Nos. 547, 548, and 549, the differential in price between cloth and paper, and cloth and bulk, is lower than in the preceeding quotation; can you explain that?

Do you want the previous quotations?

A. Yes, I will have to have those.

As a matter of fact, in Respondents' Exhibits Nos. 547, No. 548 and 549,—on Exhibit No. 547, it shows the difference in bulk at $1.05 per barrel less than the cloth price; whereas Respondents' Exhibit No. 548 and Respondents' Exhibit No. 549 carry that as sixty-five cents per barrel less than cloth. Now if you will look on the backs, you will find on Exhibit 547, the bags were figured and allowed for at twenty-five cents each, whereas on the other two forms they only show at fifteen cents each.

There was a change in the bag redemption value—

23390 I will call it the "bag redemption value" that is not exactly the correct term, perhaps, but it will do. On April 2, 1919, the charge for and the redemption price for the bags was changed from twenty-five cents to fifteen cents each, but we still retained and have retained ever since that time the leasing feature which we included in 1918.

Q. What was the reason, Mr. Coogan, for changing these differentials?

A. Well, the difference in the charge for the cotton bags would make a change in the differential as to bulk an absolute necessity. As a matter of fact, while one shows $1.05

and the other shows sixty-five cents, in one case the bags are twenty-five cents and in the other case fifteen cents; that is a difference of ten cents per bag, or forty cents per barrel.

Now there is no actual change there in the bulk price when you take that into consideration.

May I see these last exhibits?

Q.—Yes, sir.

23391 The witness identified Resp. Ex. 550 as a dealer periodical quotation form used by Alpha from November 1920 to June 1921; Resp. Ex. 551 quotation used at Alpha's Bellevue office, bearing no date but used after 1920 because Alpha did not take over the mill there until December 1920; Resp. Ex. 552 as a specific job quotation form used by Alpha from November 8, 1920 until, June 1921, but he was not sure as to the last date.

23392 (RESP. EXS. 550, 551, and 552 were offered and received in evidence.)

Q. Mr. Coogan, with reference to Respondents' Exhibits Nos. 550, 551, and 552, you used the expression "periodical quotation." Will you tell us what you mean by that term with reference to your quotations?

A. I meant it was a form we used in sending quotations to dealers at intervals, regardless of whether the price was changed or not.

We also used that same form in the event we did change our prices at any time, either up or down.

Q. Now, I notice on Exhibits, Respondents' Exhibits Nos. 550, 551, and 552, which I think you said you began to use in 1920; is that right?

A. Yes, sir.

Q. They each show a cash discount of ten cents per barrel for payment in ten days.

A. Yes, sir.

Q. —Whereas the former quotations show a cash
23393 discount of five cents per barrel for payment in ten days.

Can you explain that?

A. Yes, I remember that the cash discount was increased from five to ten cents per barrel sometime in 1920, I couldn't give you the exact date.

Q. Can you tell us your reasons for doing that?

A. As I remember it, those terms had been increased

by one of our competitors, by one or more of our competitors, and we simply followed it.

We had to follow that because it was more advantageous to the customer, and of course we followed it and put in that same discount.

I think that in reading this quotation, relative to Respondents' Exhibit 550—I think I said that ran to June 26. Instead of that—I didn't read it correctly, it was used up until January 26, 1921.

Q. Mr. Coogan, I want to call your attention at this time to Commission's Exhibit No. 3192, which is the publication of the Portland Cement Association, Trade Practices in the Cement Industry, and I call your attention to page 4 of that exhibit, paragraph—in the sixth paragraph, in which it states that the committee recommends that all cement companies continue to use the five cent discount.

I will ask you whether or not your company followed that recommendation?

23394 A. Well, no. Our files plainly show that in 1920, we adopted a cash discount of ten cents per barrel.

Q. I notice on this Respondents' Exhibit 552, Mr. Coogan, in that specific job quotation that it contains a provision whereby any decline in the market price during the life of the job will apply to shipments under the con-

23395 tract during the period the lower market price is in effect.

Can you tell us whether or not the use of this form in 1920 was the beginning of your use of that price protection clause?

A. According to my recollection, that was at the time our company put that in, because we found some of our competitors guaranteeing against decline, and also that some who didn't carry that provision in their contracts were nevertheless extending the benefit of a decline on specific job contracts, and in the event there was a decline, we found that the parties with whom we had specific job contracts—if we didn't give them the benefit of that decline, they were very likely to step out and buy from one of our competitors at the lower price and just let our contract hang up in the air, and we couldn't afford to—it is probably true that the contracts might have been enforced, but we didn't want to spend all of our time in court.

23396 The witness identified Resp. Ex. 553 as a dealer quotation form used January 26, 1921 to March 1921; Resp. Ex. 554 as a dealer quotation form put in use on March 28, 1921; Resp. Ex. 555 as a dealer quotation form put in use on March 30, 1921; Resp. Ex. 556 as a dealer quotation form put in use September 15, 1921.

23397 The witness identified Resp. Ex. 557 as a quotation form for specific contracts put in use by Alpha on January 26, 1921. The bag value on that was changed on March 28, 1921, with paper bag differential 23398 change on March 30, 1921; Resp. Ex. 559 as a specific job quotation form used by Alpha beginning March 30, 1921.

Q. Mr. Coogan, referring to Respondents' Exhibit No. 558 for identification, you notice the printed matter in the fourth and fifth paragraphs have been stricken out and ink used to change that.

Will you please explain that if you can?

A. The back of this exhibit, Respondents' Exhibit No. 558 for identification, shows that the value of cotton 23399 bags had been reduced from twenty-five cents to ten cents each.

Now, that necessarily made a change on the part of the quotation form both in regards the differential in paper sacks as well as in bulk.

On this, for example, the printed matter shows the differential in bulk—that is, $1.05, and paper bags seventy-cents. There having been that change in the rebate necessitated the change on the face of the quotation, which is shown in ink where it states the differential in paper sacks and cloth, and the differential bulk and cloth. If that was not changed, it would be unequal. That is the change shown in ink.

Q. And the same thing is true of the differential in paper bags?

A. Yes, sir, as I stated.

Q. Was that change made in ink as shown there, made by your company in the regular course of business?

A. Yes, sir.

Q. Do you know who it was made by?

A. It was made by the statistical clerk in the sales department, in our sales records.

23400 (RESP. EXS. 557, 558, and 559, were offered and received in evidence.)

The witness identified Resp. Ex. 560 as a memorandum of agreement form used from November 8, 1920 until January 26, 1921, in closing contracts for specific jobs either direct with consumers or through dealers; Resp.
23401 Ex. 561 for identification is the same sort of paper put in use by Alpha on January 26, 1921, and the cloth sack basis was changed on March 28, 1921, and there is a notation to that effect on that exhibit; Resp. Ex. 562 for identification is the same kind of a form used by Alpha on March 30, 1921.

23402 (RESP. EXS. 560, 561, and 562, were offered and received in evidence.)

23403 Q. Now I want to call your attention to the exhibits just offered in evidence, being Respondents' Exhibits Nos. 560, 561, and 562, and I ask you to also refer to Respondents' Exhibits Nos. 543, 544, 545, 547 and 549, and tell us if there is any relation between those exhibits, as to your use of them.

Q. Is there any relation as to the form—are they the same forms or did you use other forms than these?

A. No, these are forms—the last exhibits that were given to me are memorandum of agreement forms which follow the acceptance—that form follows the acceptance of a quotation on a job on our specific job quotation forms.

23404 The witness identified Resp. Ex. 563 as an Alpha dealer quotation form used November 5, 1923; Resp. Ex. 564 as an Alpha quotation form used December 10, 1925; Resp. Ex. 565 as an Alpha dealer quotation form in use March 9, 1926. There is a notation on Resp. Ex. 565 that on February 13, 1926, the clause shown in
23405 parenthesis on the reverse side was put in effect.

Voir Dire Examination by Mr. Wooden.

He was willing to vouch for the accuracy of those dates.

(RESP. EXS. 563, 564, and 565 were offered and received in evidence.)

23407 The witness identified Resp. Ex. 566 as an Alpha dealer quotation form used August 18, 1926; Resp. Ex. 567 as Alpha dealer quotation form used August 28, 1926. The witness testified that he was positive about the

August 18, 1926 date because that was the date that Alpha put in what was called "dealer discount", so that the witness did not have to refresh his memory as to the date of this quotation.

23408 (RESP. EXS. 566 and 567 were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, you say that you used them on that date. Just to make the record clear, do you mean that is when you started using them?

23409 A. Oh, Exhibit—Respondents' Exhibit No. 566, which is the exhibit that has the date of August 18, that was used on August 18 because that is the date that we sent out our quotations covering the dealer discount which we put into effect at that time.

Now, Respondents' Exhibit No. 567 was used on August 28, because in the meantime we had made a change, or rather, the railroads had made a change in handling the freight on empty bags returned.

Our quotations of August 18, the railroads had not yet changed their rule, and they demanded a prepayment of freight on empty returned bags, and this quotation bears the notation that the cement company will reimburse the customer, whereas the quotation which was used on August 28, simply provides for the return of the bags because in the meantime the railroads changed their rules and they allowed these bags to come back; they allowed their agent to accept bags with freight charges collect, but their rules, previously, they had insisted on prepayment.

23410 Q. I would like to call your attention to Respondents' Exhibit No. 566, Mr. Coogan.

I would like to ask you whether or not this is the exhibit you had reference to when you have just been describing the ten cents trade discount?

A. Yes, sir. Respondents' Exhibit No. 566 is the first form used by us and it is the first time we quoted with a trade discount.

The witness identified Resp. Ex. 568 as an Alpha quotation form used on October 11, 1926; Resp. Ex. 569 as Alpha quotation form also used on October 11, 1926.

23411 (RESP. EXS. 568 and 569 were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, I want to direct your attention to Respondents' Exhibit No. 569.

A. Yes.

Q. I notice on that exhibit there is no mention of trade discount. Will you explain that?

A. Yes, sir. This is a quotation form which was used by us in quoting to consumers where we quoted direct to consumers, and, of course, it would not bear any reference to a dealer discount, dealer's trade discount was applied only on shipments which we made to the dealers.

23412 The witness identified Resp. Ex. 570 as Alpha quotation form used on June 19, 1928.

(RESP. EX. 570 was offered and received in evidence.)

Q. Now, Mr. Coogan, on this last exhibit, Respondents' Exhibit No. 570, there seems to be or at least there is a change. It seems to be, from the previous document, a change in the first one that I have, for it has not and does not disclaim responsibility for loss or damage in transit. Will you look at this document and tell us whether or not this did or did not represent any change in your company policy as to that?

A. Respondents' Exhibit No. 570 for identification is the time that the Alpha Portland Cement Company

23413 dropped any reference to damage of cement in transit. Prior to this time, we had, on our printed forms, disclaimed responsibility.

We have never enforced it. We were not able to enforce it, even if we tried without having a lot of trouble with our customers, so after experimenting with this and finding that it was not a practical matter, we dropped it altogether in 1928 and have not used it since that time, to the best of my knowledge.

Q. Then, coming back to my question, does that or does that not represent a change in your policy?

A. Yes, that was a change in our printed policy.

A. As a practical thing, as far as the practical end of it was concerned, it had remained about the same as it was before.

The witness identified Resp. Ex. 572 as an Alpha

23414 form used for dealers on November 12, 1930; Resp. Ex. 571 as an Alpha consumer quotation form used on June 19, 1928.

(RESP. EXS. 571 and 572 were offered and received in evidence.)

Q. Mr. Coogan, on Respondents' Exhibit No. 572, there does not appear to be any trade discount provided.

Can you state whether or not your company eliminated trade discounts at that time?

A. Yes. On November 12, 1930, the Alpha Portland Cement Company started using what was generally referred to as a "dealer service payment plan."

We had at the time that we sent out these quotations of November 12, 1930, we sent at the same time a circular advising our customers of the change in our plans.

In other words, we withdrew the ten cent dealer discount, which we had allowed up to that time, and
23415 substituted for it a dealer service payment of five cents per barrel.

By Trial Examiner Norwood:

Q. That cut your dealer profit in half, did it?

A. In figure, yes. In actual practice, the dealer had been abusing that discount to such an extent that he was reselling cement or accepting cement orders at a quarter of a cent, and we were not able to meet the competition of some other company, as well as our own, because of this abuse.

In other words, it was very confusing to the industry.

I think, about this time, some other company put this plan into effect and we followed it soon after they had put it in.

We then sent out these soon after they had put it in and we decided to do the same thing. We thought it was a good thing, and it did work out to a better advantage.

Q. I do not understand the reference to ten cents per barrel.

23416 Will you explain that?

A. That really cut our differential between the dealer and the consumer from ten cents to five cents per barrel.

The witness identified Resp. Ex. 573 as an Alpha form used on July 29, 1932.

(RESP. EX. 573 was offered and received in evidence.)

By Mr. Leisure:

Q. I notice on Respondents' Exhibit No. 573, Mr. Coogan, that the bulk price has been changed to forty-five

cents less than the cost price, whereas it was fifty cents less on your prior quotation.

Will you explain that change?

A. On that date we changed our differential in bulk from fifty cents to forty-five cents.

23417 Q. Will you explain the reason for doing that, if you will, Mr. Coogan, and give us the date of it.

Mr. Wooden: What was the date?

The Witness: July 29, 1932.

By Mr. Leisure:

Q. Please explain that.

A. That reduction in the differential of bulk and cloth was made, was first made as I remember it, by some companies in the Middle West.

Now, it was then met by several other companies and we put it in. Now, at that time the shipment of cement in bulk was a very small factor in our business. As a matter of fact, we probably shipped and it probably represented less than two per cent. of our total shipments, so we paid very little attention to the differential and simply followed what we found our competitors doing.

Since that time, bulk is a more important factor. I should say today that the average percentage shipped in bulk is probably ten per cent.

23418 Q. Mr. Coogan, can you identify Respondents' Exhibits 574 to 580 for identification?

If you can, will you do so?

By Trial Examiner Norwood:

Q. Will you describe those generally? Are those all blanks? They will show what their nature is as to each one, so if you will just describe them generally, I believe it will save time.

Mr. Porter: I think, your Honor, we will have to get the dates because that is very important.

Trial Examiner Norwood: The dates will be on the papers if they are received.

Mr. Porter: I do not think it would disclose it that way.

By Trial Examiner Norwood:

Q. Are they all from your file or are they all blanks that were used by your company?

A. All blanks, yes.

Q. With the dates indicated on the papers?

A. Yes, sir, but they are used under different circumstances. For example, one—

23419 Q. Will you state those circumstances later, we are just asking you to identify them now in the shortest possible way.

By Mr. Leisure:

Q. These are all from your files and were used by your company?

A. That is correct.

(RESP. EXS. 574, 575, 576, 577, 578, 579, and 580 were offered and received in evidence.)

23420 Q. Referring now to Respondents' Exhibit No. 574. That is this one here. Respondents' Exhibit No. 574 in evidence.

A. Yes.

Q. When and under what circumstances did your company use that exhibit?

A. This is an Alpha Portland Cement Company form—quotation form used by us on May 31, 1933.

23421 The witness identified Resp. Ex. 575 as an Alpha quotation form used on May 31, 1933, for periodical quotations; Resp. Ex. 574 as an Alpha quotation form used May 31, 1933 in case Alpha advanced its prices; Resp. Ex. 576 as an Alpha quotation form used October 30, 1933.

23422 By Mr. Leisure:

Q. When did you use that form?

A. On that date.

Q. Now, when you say "used for that date" or "used on that date" Mr. Coogan, will you explain for the record very definitely just what you mean by that?

A. I mean that is the date we first adopted the policies which are stated in those quotation forms.

Q. Respondents' Exhibit No. 576.

A. Respondents' Exhibit No. 576 simply means a change in method that the Alpha Portland Cement Company made which we thought would be popular with our customers.

There had been an awful shift from cotton bags to paper bags, and up until this time we had quoted on both paper and cotton sacks, and beginning with this quotation, we decided that inasmuch as most of our customers were buying our cement in paper, we would quote them only in paper

packages and make our deductions for differential for bulk or the deduction representing the differential for bulk shipments from the paper price and then show, which we did show on here, that cost is twenty-five cents per
23423 barrel higher than paper. It was a simple change. It was a change in form but not in substance.

The witness identified Resp. Ex. 577 as a periodical quotation form of Alpha put into effect December 7, 1933, used when Alpha has no change in its price; Resp. Ex. 578 as a quotation form of Alpha put into effect December 7, 1933, which provides a space for a 5 days' notice of advance in case Alpha advances its price.

Q. When did the N. R. A. Code become effective, Mr. Coogan?

A. Why, I think our Code was approved some time in November, 1933.

Q. Did you make any changes in these quotations, I am referring now to Respondents' Exhibit No. 577 and Respondents' Exhibit No. 578, as the result of the N. R. A. Code?

A. No. Not in substance, we did in words and in
23424 form because in the N. R. A. Code there were forms prescribed for quotation and so forth, and generally speaking, we adopted them but in the main those forms quoted generally the same, and those forms followed generally the policies which we had been pursuing prior to the Code.

The witness identified Resp. Ex. 579 as an Alpha quotation form put in effect on May 4, 1934, and Resp. Ex. 580 as an Alpha quotation form put in effect on September 17, 1935.

Q. Yes. I notice that on Respondents' Exhibit No. 579 and Respondents' Exhibit No. 580, these forms appear to again change the form of quoting so that most of the cloth and paper prices are given with only the bulk price to be computed.

Will you explain your reasons for this change?

A. I explained previously that at one time we started quoting one in paper thinking that that would be acceptable to our customers. Most of our competitors continued quoting both in cloth and paper and eventually, in order to please our customers, we did go back to the same form of quoting.

23427 The Witness: (Continuing) This indicates very

clearly while there is no difference in substance that it is absolutely necessary for our company to make it
23428 this way and to make known in some detail these facts, to meet in competition that which our competitors have placed upon their quotations, and therefore we did so.

In other words, and maybe I did not explain it very clearly there, this does indicate very clearly that while there may be no difference in substance, it is a different way of stating it, that it was absolutely necessary for our company to meet any quotations in the same detail as our competitors, and thus meet the competition which we were faced with from our other competitors.

The witness identified Resp. Ex. 582 as an Alpha
23429 quotation form first used in October 1936, and still being used through September 1937. This form was to be used in the event that Alpha made an advance in its price. The witness identified Resp. Ex. 581 as an Alpha quotation form in effect April 13, 1936 and still being used on September 27, 1937.

(RESP. EXS. 581 and 582, were offered and received in evidence.)

Q. Mr. Coogan, Respondent's Exhibit No. 581 and Respondents' Exhibit No. 582, are you still using them
23430 at the present time?

A. I think we have been using them without any changes in our quotations forms since that date. That is the notation at the time that I looked up these quotations in our office, but I am quite sure there has been no change up until the present time.

23431 The witness identified Resp. Exs. 583 to 601, inclusive, as Alpha quotation forms which were used in quoting to various classes of customers between 1923 and 1936.

Voir Dire Examination by Mr. Wooden.

23432 The dates are shown on each exhibit and the witness thinks it is complete for the whole period and that there are no missing forms.

(RESP. EXS. 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, were offered and received in evidence.)

Q. I would like to direct your attention to Respondents' Exhibit No. 601, and ask you, Mr. Coogan, if that is a form used by your company at the present time, referring to specific job quotations?

A. Yes, this form is still being used by us.

Q. We discussed this morning a number of various changes on various dates with respect to discounts and terms in connection with your quotation forms.

A. Yes, sir.

Q. I would like to ask you now whether or not there were any changes on job quotations, and if so, whether they were also reflected in these exhibits?

A. Do you mean, specific job quotations?

Q. Yes, I meant to say on specific job quotations.

A. Of course, that would be shown in that series
23433 of quotation forms.

Q. And does the testimony which you have already given apply, or does it not apply, to the changes in specific job quotations—what I have reference to, is the testimony you gave concerning those changes, Mr. Coogan.

Mr. Porter: You mean, the changes on the periodical quotations.

Mr. Leisure: Yes, on the periodical quotation.

The Witness: Well, of course when we made a change in the periodical quotations in the matter of terms, or any conditions, why we naturally made that same change on our specific job quotation. The only difference was—the only difference being that of course when we had our dealer's discount that didn't show on the specific job consumers quotation, or on the periodic consumers quotation.

23434 A. May I hear that question again?

Q. My question was that in 1931, I think that is Exhibit, Respondents' Exhibit No. 591, your specific job quotations contain the clause containing transportation charges, and I suggested to you that it does not appear in the one of November, 1930, which I think is Respondents' Exhibit No. 589, and I ask you to explain the purpose of that clause and the reason for the change.

A. I misunderstood your question. I thought you were asking about the notation on some of these quotation forms that the cement is to be paid for by the buyer for
23435 the account of the buyer.

The clause you are referring to is the decline

clause in connection with the transportation clause, and that is included on Respondents' Exhibit No. 591. That is included on Respondents' Exhibit No. 591.

Q. That is right. Now, it does not appear, does it, in Respondents' Exhibit No. 589, which is November, 1930, will you tell us the reason for the change.

The Witness: No, Respondents' Exhibit No. 589 does not bear the clause that the price is subject to changes in transportation rates.

By Mr. Leisure:

Q. Now, I believe I asked you two questions in one. I asked you to explain the clause, and now tell us the reason for the change.

A. The reason we changed that at the time was because there was at the time a great deal of uneasiness and
23436 unrest about freight rates, and as I remember, we did not want to have to stand additional freight rates that might be imposed on our shipments, and therefore, we put that in for protection.

Q. Mr. Coogan, with reference to Respondents' Exhibit No. 590, it states that the customer will be given the benefit of a decline in freight charge.

Will you explain the reason for that clause, please, sir?

A. This provides for either an advance or a reduction, as the transportation charges may be advanced or reduced, and I think I explained previously that that was put in in order to protect our company in case of an increase in freight rates.

Now, of course, under a specific job contract, the price mentioned would be the top price, and only in the event prices had been reduced in the meantime, would that be affected, but as a matter of fact, I don't know that it was ever necessary at that particular time to use that clause, but it was put in there simply to protect our company.

Q. That being so, I observe that Respondents'
23437 Exhibit No. 591—just look at that, please, sir.

That same freight rate clause was amended in that?

A. It was.

Q. Will you explain the reason for that amendment?

A. The reason for the amendment in the clause was to give our company protection in the event there was a

change in the transportation rates, that we would reduce the price under the specific job contract, but that at no time would the price be reduced—the current price of Alpha Portland Cement Company's cement be reduced at the points specified in the memorandum agreement.

Q. At no time would it be reduced your current price, did you say?

The Witness: Say we take a contract for $2.00 a barrel, which is specified in the contract. Now, our current market price at that destination goes down to $1.90.

By Mr. Leisure:

Q. Yes. Go ahead.

A. Now the customer gets that $1.90 while that lower price is in effect. Now, if the reduction in freight rate
23438 causes us to reduce our price at that particular destination, he will get the benefit of it, but in no event, will we go below our current destination price at that market.

Trial Examiner Norwood: That would give you the benefit of any reduction in freight, wouldn't it?

The Witness: No, because in the meantime we have reduced our price there and the net we would be getting would be less than that under the original contract.

If there has already been a reduction in price there, we have already given the customer the benefit of it, and of course, that reduces our net received by that much.

By Mr. Leisure:

Q. Let me direct your attention to Respondents' Exhibit No. 595, and ask you whether or not that was used at the beginning—at the time of the N. R. A. Code in December of 1933?

A. Respondents' Exhibit No. 595 is Alpha's quotation form which was used December 7, 1933, and conforms with the forms which were attached to the Code when it was approved.

As I remember it, there is no change in the substance, there is change in the wording and one or two small additions, but in substance I should say it is about the same as the ones that we had been using previously.

Q. Did you have any provision with reference to
23439 the clause providing for a guaranty in the case of a price decline—with reference to that, let me also

show you Respondents' Exhibit No. 596, the next numbered exhibit.

A. Respondents' Exhibit No. 596 bears a clause that all shipments will be at our current destination price on the date of shipment, if that current destination price is below the price named in the contract.

Q. I realize that, but can you tell us whether you changed your practice on quoting specific job contracts during the lifetime of the contract?

A. Yes, this was changed.

Q. Now referring again to Respondents' Exhibits Nos. 595 and 596, you keep the clause in both instances there, or was it left out in one instant, and if you did leave it out, please, will you please tell us how that happened?

A. Well, there is no question but what the clause
23440 appears on Respondents' Exhibit 596, whereas it does not appear on Respondents' Exhibit No. 595.
23441 The witness identified Resp. Exs. 602 to 612, inclusive, as forms of memorandum of agreement used by Alpha on the dates stated on each form which were used after acceptance of a specific job quotation.

Voir Dire Examination by Mr. Wooden.

23442 These forms were adopted and used as of the dates shown.

(RESP. EXS. 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, and 612 were offered and received in evidence.)

Q. Let me ask you, in relation to your previous statement about the various changes in your terms and discounts in connection with the quotation forms used by your company for this period, as you have told us; are those various changes also reflected in this group of specific job contracts?

23443 A. Yes, sir, those changes are also reflected in the job quotations—the changes reflected in the job quotations would be carried forward in the memorandum of agreement forms resulting from the acceptance of one of those quotations.

Q. And your testimony with reference to the terms and discounts applies—or does your testimony with reference to the terms and discounts apply to the changes reflected in these specific job contracts?

A. Yes, they would be exactly the same.

Q. I show you Respondents' Exhibit No. 612, and as-

you whether or not that is the form you are using at the present time?

23444 A. Respondents' Exhibit No. 612 is the form in use by our company at the present time.

Trial Examiner Norwood: Do you make contracts on those terms without changing them?

The Witness: On these terms?

Trial Examiner Norwood: Yes, sir.

The Witness: Yes, sir, we do.

The witness identified Resp. Exs. 613-616 as Alpha quotation forms for quoting in New York Harbor, where

23445 it is necessary to add lighterage provisions covering delivery by railroad barges or outside lighters.

(RESP. EXS. 613, 614, 615, and 616 were offered and received in evidence.)

23446 The witness identified Resp. Ex. 617 as a memorandum of agreement form used by Alpha in closing contracts where delivery by railway lighterage or

23447 outside lighters was involved, which form was first used by Alpha on December 20, 1933, and Resp. Ex. 618 as a form of Alpha for the same purpose which was used by it July 5, 1934.

(RESP. EXS. 617 and 618 were offered and received in evidence.)

Q. Mr. Coogan, I call your attention to a pencil memorandum on Respondents' Exhibit No. 617, and ask you to state what that is, if you know?

A. It is stated here what it means, "Effective July 5, 1934, the freight rate clause was eliminated," and that effective November 16, 1934, the sentences marked "B" and "C" on the reverse side was eliminated.

On the other side, these two sections are marked so as to make it intelligible, as to just what we were using.

Q. And do you know who wrote that, or can you

23448 say as to when that was written?

A. Yes, this was written—this particular thing was written by our chief clerk in our sales department.

Q. Was that written in the regular course of business, Mr. Coogan?

A. Yes, sir.

M. Wooden: Were these things written by the chief clerk in preparation for your producing them here?

The Witness: No, no, we keep a regular running file of all those things.

By Mr. Leisure:

Q. Now, referring to Respondents' Exhibit No. 614, on that I call your attention to some hand written memoranda on that exhibit, and ask you to identify that if you can.

A. This is the same handwriting that is on the other, and refers to exactly the same clause, because this is on the quotation form and the other was on the memorandum agreement form, and of course the same changes were made in them at the same time.

Q. And in answer to Mr. Wooden's questions, they were made under the same or similar circumstances, in
23449 the regular course of business in your office, or were they not?

A. Yes, they were made under exactly the same circumstances.

23450 Q. Referring to Respondents' Exhibit Nos. 617 and 618, are there any substantial differences between the terms contained in these forms and those contained in the other specific job contracts that you have identified—I am referring, of course, to your practice during that period of time and whether or not you adopted any substantially different methods.

A. No, these particular quotations and memorandum agreements refer to lighterage deliveries, mostly in New York harbor.

The provisions in there are the same as in the other quotations and memorandum agreement forms that we were using for rail shipments as far as I can remember there have been no substantial changes in terms and conditions since about 1931. I think it was sometime in 1931 when we discontinued dealer service payment.

I think, generally speaking, the terms of sale have remained pretty near the same, as far as our company is concerned, since then.

23451 The witness identified Resp. Exs. 619 through 621 as copies of specific sales orders used by Alpha beginning December 7, 1933, at the time the code was effective, and still used by Alpha today.

23452 (RESP. EXS. 619, 620, and 621 were offered and received in evidence.)

Q. Mr. Coogan, when did the Alpha Portland Cement Company first use a specific sales order; if you know?

A. I believe it was when the Code became effective.

Q. Had you any form which corresponded to the specific sales order prior to that time?

A. I think not, because the first date there is December 7, 1933.

Q. What were the circumstances under which you adopted such a one?

A. Well, that form was adopted by us because it is a little more satisfactory to a dealer and gives him a little more protection in handling cement under a specific job.

In other words, we take from him a specific sales order, at a certain price. In the event our price is reduced, we continue shipping him on that specific sales order, but in the event we increase our price, then we enter into a specific memorandum of agreement form at the price before we made the advance.

In other words, if we enter into a specific sales order at $2.00 and the price goes to $1.90 and then should
23453 go back to $2.10, we would enter a contract on the basis of $1.90.

Q. And as to your reasons for adopting it at that time, Mr. Coogan, will you state your reasons for adopting it at that time?

A. Well, that was one of the provisions of the Code.

Q. Now we have been discussing and have offered in evidence certain forms used by the Alpha Portland Cement Company for specific work quotations and specific work contracts, and specific sales orders; is there any other form which the Alpha Portland Cement Company has used, or now uses, in connection with quoting for cement to be used on specific jobs?

The Witness: No; not on specific jobs, there is no other form.

By Mr. Leisure:

Q. Now, in addition to your sales, on specific projects for which the specific work quotation, the specific work contract, and the specific sales orders, are used, do you or do you not sell to customers where no specific
23454 projects or specific work is involved?

A. Oh, yes. I should say probably sixty to seventy per cent. of our cement is sold that way; that is, where no contract is involved, but is sold on the open market for fifteen days shipment.

Q. Is there any restriction of any kind on the amount of cement you will sell to dealers in this fashion?

A. No, we will sell him all of the cement he will allow or take during a period of time, during any time within fifteen days and we will accept as large an order for cement during those fifteen days as he wants to take in.

Q. Just what is the purpose of the specific job contract, Mr. Coogan?

A. The purpose is to give us something on which we feel we can hold our customer, and so we will have a definite order, and a definite commitment from him that he will take that cement for the particular work required within the time specified in the contract.

It gives us a little something definite on which we can base—on which we can base some little—what I am trying to say, is, on which we can get some little or some sort of estimate of future operations.

Q. Does it give the dealer anything?

A. Yes, it gives the dealer and the consumer an absolute guaranty of the price beyond which we cannot
23455 go and enables them to sell to a contractor who might have bid on a specific job and used a specific price for the cement.

It assures that he will keep on getting the cement for that particular work.

23456 Q. Again referring to Respondents' Exhibit No. 612, you told us that the Alpha Portland Cement Company's specific job quotations you had testified with reference to the Alpha's quotations, as that exhibit shows, that you adopted this clause to meet the competition of other companies and used it back in 1920.

I don't remember whether you told us whether this is the same clause that is now used, that being Respondents' Exhibit No. 612; will you make that clear, please?

The Witness: This does refer to what we called the "decline clause."

By Mr. Leisure:

Q. What I am getting at; why do you use it?

A. We were forced to use that because our competitors were doing that, and our customers—if we did not use that, our customers would be likely to buy cement from somebody else during the time such lower prices were in effect.

23457 We were compelled, both by our customers and our competitors to give them the benefit of a decline in price.

Q. Is that in use at this time?
A. Yes, sir.
Q. Well, do you know what conditions in the trade prompted its use?
23458 A. Well, of course, that was demanded by our customers. We were actually forced into doing it by the action of our competitors in adopting this, we were forced into it and the trade conditions were such that we had to put in that declining clause.
Q. Mr. Coogan, do you require that the purchaser already have the award or be committed to furnishing the cement for the specific work in question before you execute a specific job contract?
A. Yes. We do.
Q. How do you provide for the prospective buyer who desires to be protected on a specific job where he has not got a contract, and where he has not yet received the award but merely anticipates it?
A. Where we quote to the dealer and leave our quotations open for a stated period of time, now, if the contract is, or if the bids have been opened but the contract has not been awarded, or even if the bids have not been opened and the contract has not been awarded, and we should advance our price, we will protect the dealer.
23459 We will make what we call a provisional contract with the dealer which will protect both him and his customers on the cement in the event that he is awarded the contract.
Now, we do that only in case he is the low bidder. If he is the low bidder, on the job, and the job has not been awarded at the time these prices advance, he is given a provisional contract which protects him in the event he is given the job.
Q. Now, if the buyer obtains the award, is he then entitled to a specific job contract under the terms stated in your specific job contract?
A. Yes, sir. He is.
Trial Examiner Norwood: Under those contracts, while they may get it for less, yet they would not have to pay any more?
The Witness: That is correct.
By Mr. Leisure:
Q. Is a specific job quotation used for quoting dealers?
A. Oh, yes.

Q. You mentioned a specific sales order.

What is the purpose of that? For what is it used?

A. The specific sales order is accepted from the dealer who has a contract for a specific job. We ship, under that specific sales order, at the market price. If the
23460 price goes down, we continue shipping at the "down" price; then if our price should go up, we enter into a specific job contract with him at that price for the balance of the cement required for that particular operation.

Q. Do you require that the dealer have a contract with the contractor for the specific work in question, before he is permitted to enter into a specific sales order?

A. Oh, yes, according to our idea, the dealer has no obligation until he actually gets the order, and of course we do not protect him until he has an actual obligation because it entails an obligation on us to furnish the cement at that price, and if he does not have a contract at the time he places the order with us, why, he cannot take out that cement.

Q. Well, then, what is the difference, Mr. Coogan, between a contract and an order; in other words, what is the difference between the function of the specific job contract and the specific sales order, so far as the dealer is concerned?

23461 A. Well, it might put a lower stop price, on it. For example, if we close a contract with a dealer, or furnish to the dealer a specific sales order at $2.00 per barrel, now, our price might go down to $1.90 per barrel, and we would continue to ship on that specific sales order at the price of $1.90.

Now, if our price should og up to $2.10, or back to the $2.00 price, we would then enter into a specific contract with that man at the $1.90 price.

It gives him the benefit of the price that is in at the time our prices advance.

Q. Now, suppose the dealer had entered into a specific job contract, Mr. Coogan, and your market price at that destination went down, the figure you gave; that is, to $1.90 per barrel, what price would he pay?

A. He would pay $1.90 per barrel, while that price was in effect.

23462 Q. What I want to get at is this: if subsequently the price of cement should be increased to $2.10 at

that point, would the buyer be obliged to pay again $2.10 per barrel?

A. Under the specific contract?

Q. Yes.

A. Yes. He would. Our marketing arrangement protects him. Our guaranty against decline applies to the dealer's price during the time that such lower prices are in effect, so that he gets the benefit during the lower prices while we are giving those lower prices to the trade.

If it goes back to $2.00 and his contract is at $2.00, then we charge him $2.00 and if it goes to $2.10, we still charge him $2.00.

Q. Then, if I understand you, under those cir-
23463 cumstances, if a buyer had a sales order he would have the privilege of entering into a specific job contract at the $1.90 price?

A. That is correct.

Q. Now, if the specific sales order offers this advantage to the dealer, let me ask you, does it offer any advantage to the manufacturer?

A. Yes. We think it does offer an advantage, some advantage to the manufacturer or some benefit to the manufacturer.

For example, it enables the manufacturer to keep track, more nearly, of the cement required and to see that the cement purchased under that specific order—under that specific sales order for that particular job is used on that particular job.

In other words, I have seen many cases where dealers will close a contract at $2.00, if there was no change in our market price they would have shipments made on the open market at that price and would not apply that against the contract for that specific job.

Then, in case we raise our price to, we will say, $2.10, then they would immediately start ordering on the contract and they would still have theoretically the full amount of the contract to draw on.

Now, this enables us, at the time we change the price, to do some checking up and find out the balance of
23464 the cement required for that particular operation.

Q. Now, a moment ago when I asked you whether you did require that the purchaser already have an award or be committed to furnishing the cement for this specific work in question; before you would execute the specific job contract, and I believe you stated that you did.

A. If I understand your question correctly, we do require that the purchaser already have the award or be committed under a contract to furnish the cement for a specific construction job of some kind before we would execute a specific job contract with him.

Q. How long has that been so?

A. That has been so for more than twenty-five years.

Q. Now, taking up a new subject matter, Mr. Coogan.

A. Yes.

Q. Mr. Coogan, first, I would like to ask you concerning the cash discount offered by the Alpha Portland Cement Company.

A. Yes.

Q. Can you state whether or not the practice was during the period of time that these exhibits were offered—the exhibits I am referring to now are those representing the Alpha Portland Cement Company's quotations and contract forms which you have identified—you have cash discounts which the Alpha Portland Cement Com-
23465 pany had used from any certain date?

A. Yes.

Q. In other words, how far back does that go, to your knowledge?

A. Well, cash discounts have been in effect with our company since 1897.

Originally they were one per cent. That applied up until some time in the early 1900's when we went to two per cent.

In 1900, I think it was, it was changed to one cent per barrel, and then it went to two cents per barrel, and in 1920 it went to five cents per barrel.

In 1926, we quoted a cash discount of ten cents per barrel in fifteen days. Prior to that time all the cash discounts which we named were subject to payment within ten days.

On August 18, 1926, it was changed, and we not only changed the discount but the length of time was changed.

Q. And what had been the documents that we have been discussing here? For how long have these exhibits that we have been discussing showed the discounts for? From approximately what times?

23466 A. As a matter of fact, with all of the quotations that I have seen, I think they have shown a discount from 1903.

Q. Well, before we leave that subject, I would like to ask you again, or I would like to ask you before leaving

this subject, do you know whether or not your present cash discount is the same as the cash discount offered by other respondents in this case, Mr. Coogan?

A. Well, I could not answer for all of the respondents in this case, that covers too wide a territory.

I will say this, that all of the,—to the best of my knowledge it is the same with those companies with which we come in competition.

Q. Do you know whether your terms are the same as those of other respondents in this case?

A. No, I cannot answer for all of the respondents in this case. Of course, we only keep track of—we only keep track of the ones with whom we come in competition.

Q. As to the ones with whom you come in competition, do you know whether they are the same or similar to those terms which you offer?

A. Well, we always try to keep our terms and conditions as near as possible as favorable as any of our competitors. We must, of necessity, do so.

23467 By Mr. Leisure:

Q. I will amend the question.

Is it your purpose in your business to make your terms as favorable to your customers as your competitors' terms are favorable to their customers?

A. Well, we have to make them as favorable to our customers as our competitors do to their customers.

Of course, that applies to our prospective customers and their prospective customers, too, the business we are both trying to get and hold.

Q. Are your terms and discounts which you have observed, are as favorable to your customers as your competitors' are to their customers, to your knowledge, the result of any mutual understanding or agreement between yourselves and your competitors?

A. No, I should say, generally speaking, our discounts and terms of sale, while following largely along the lines of our competitors, yet, they have not been subject, so far as we are concerned, to any agreements or undertakings of any kind.

23468 Q. And if there were such an agreement or understanding by your company with any of your competitors, would you know of it?

A. Yes, I would.

The witness identified Resp. Ex. 622 as a letter
23469 dated August 4, 1926, written by the chief clerk of Alpha's sales department; Resp. Ex. 623 A-B as a Lehigh circular letter, dated August 17, 1926; Resp. Ex. 624 as a letter, dated August 18, 1926, from Alpha's general sales manager, addressed to all sales offices.

(RESP. EXS. 622, 623-A, 623-B, and 624 were offered and received in evidence.)

23471 Washington, D. C.,
September 19, 1939.

23472 F. M. COOGAN was thereupon recalled as a witness for the Respondents, and, having been previously sworn, testified further as follows:

Direct Examination by Mr. Leisure (Continued).

Q. Mr. Coogan, when we adjourned at the last hearing I was questioning you about Respondents' Exhibit No. 622, Respondents' Exhibit No. 623, and Respondents' Exhibit No. 624. I want to call your attention to those exhibits at this time. The record shows that your present cash discount of 10 cents for payment within 15 days from the time of invoice was put into effect in August, 1926. Will you be good enough to refer to these exhibits I have just mentioned, whether or not they relate to a change in the cash discount, in August, 1926?

A. Yes, they refer to the cash discount of 10 cents
23473 per barrel and also the dealers trade discount of 10 cents per barrel which we put in on August 18, 1926.

Q. What company is referred to as "Dragon" in Respondents' Exhibit No. 622.

A. The Lawrence Portland Cement Company.

Q. I don't recall when we identified Respondents' Exhibit No. 623 whether you have told us as yet how you obtained that Lehigh Company announcement.

A. Respondents' Exhibit No. 623 was sent in to us by the president of the Phillipsburg Supply & Construction Company, which is shown by the notations on that exhibit. They are dealers who are quoted by several different companies, located in Phillipsburg.

Q. You say the Phillipsburg Supply & Construction Company; was that it?

A. Yes, sir.

Q. Where are they located?

A. Phillipsburg, New Jersey.

Q. Are they Alpha Portland Cement Company dealers?

A. They handle several different brands of cement, and are quoted by several different companies.

Q. Mr. Coogan, I notice some handwriting on Respondents' Exhibit No. 623-A. Can you identify that, please?

A. Well, that notation up in the corner marked "Phillipsburg S. & C." is in my handwriting. That down
23474 in the lower corner which says "Please return P. L. M." is the writing of Mr. Murphy, president of the Phillipsburg Supply & Construction Company who, immediately when he received this quotation from the Lehigh Company, got me on the telephone and told me what he had, and what the new terms were and said that he would immediately send this over to my office and then he put a note on it asking me to return this to him after I had used it.

Q. Mr. Coogan, will you look at Respondents' Exhibit No. 622. Between the first of August when the Lawrence Company made the change that you have referred to and August 17, when the Lehigh announcement came out, did you discuss the matter of discounts with any representatives of the Lehigh Company?

A. No, sir. I did not. We did, after the Lawrence quotation appeared in the field, our terms before that had been ten cents per barrel discount for payment within 10 days. On August 1st, or about August 1st, when these new terms came out the executives of the Alpha Portland Cement Company conferred. Our financial executive objected very strenuously to extending the discount period until thirty days because he claimed that if you did that that you would have to extend your net terms either sixty days or ninety days whereas they had formerly been thirty days. He was
of the opinion this would very greatly increase our
23475 accounting work, and also our credit risks, and it was his suggestion that perhaps the better way to meet it would be to increase the amount of discount per barrel and keep the time where it was before. However, after much discussion among all the executives, we decided that perhaps that if none of our large or important competitors would change and that if none of our large or important competitors were to change their terms we could possibly weather this through without any change in our terms. We realized, of course, that we were both serving the same

dealers, and there we might have to extend that dealer the thirty day terms if the Lawrence Company was doing it, but we decided at any rate in the final analysis to make no change for the present in our terms and to wait and see what our other and more important competitors might do.

Q. Did you know in advance that the Lehigh Company was going to announce this policy, Mr. Coogan?

A. I did not.

Q. That was a policy higher or lower or, let me
23476 put it this way; was the Lehigh's policy more or less favorable than the Lawrence Portland Cement Company's policy that merely affected the cash discount?

A. Well, the Lehigh Company was much more favorable to the dealers than the policy of the Lawrence Portland Cement Company because it gave, in addition to the 10-cent cash discount, while it only gave them 15 days as against the Lawrence Company's 30 days, it also gave the bulk of our trade, the dealers, a trade discount of 10 cents per barrel. Now, immediately that we received this information and, as a matter of fact, we had some information on the afternoon of the 17th, because the Lehigh had evidently telephoned it to some of their salesmen, who had used it in the field, and then it was confirmed the next morning by this quotation, as well as some other quotations which we picked up, and reports from our field men, which they had. So after we received that information that important competitors had put in those terms, why, there was no longer any doubt in our minds as to what we should do.

So, we immediately prepared to send out these quotations. We did not get them all out on the 18th. There were some of them that were mailed to the principal points and the office finished the mailing of them on the next day.

Q. What was your experience with respect to your dealers concerning this new policy of discount, Mr. Coogan?

23477 A. The dealers were very enthusiastic about it. They accepted and applauded it, and, as a matter of fact, I think that they wrote many letters to us commending the action which had been taken.

23480 The witness identified Resp. Ex. 625 as a letter addressed to him, dated September 3, 1926, from the National Builders Supply Association in Cleveland, Ohio, signed by Frank Dunning who, at that time, was the manager of the National Builders Supply Association;
23481 Resp. Ex. 626 as a similar letter sent from the Roch-

ester, New York, office of the National Builders Supply Association, signed by C. W. Denniston, president. Both exhibits had been mailed to him at Easton, Pennsylvania.

23482 (RESP. EXS. 625 and 626 were offered and received in evidence.).

By Mr. Leisure:

Q. Mr. Coogan, has your cash discount remained the same since August 1, 1926?

A. There has been no change in our cash discount.

Q. What about this ten cent dealer discount?

A. The ten cent dealer discount was put in effect by us on August 18, and continued by us until November 12, or 13, 1930, at which time we found what has been commonly referred to as the "Lehigh plan" in the market having been sent out by them about November 10, as I remember. Now, that plan, instead of a ten cent dealer discount gave to the dealers, a five cent rebate at the end of the year for all cement that had been sold by that dealer during the preceding year; and, I have forgotten the exact terms of the Lehigh plan, but as I remember it, in a measure, it required

23483 that the cement be resold at not less than the price at which they had billed it. After finding that in the field, and knowing what disastrous experiences we had had with the ten cent dealer discount, the Alpha Portland Cement Company sent out as promptly as we could prepare the information form, the necessary form for that purpose, and we adopted the same plan as the Lehigh Company except that we did not in any way attempt to control resale prices.

23484 The witness identified Resp. Ex. 627 as a letter from the Lone Star Cement Company of Philadelphia, Pa., dated August 17, 1929, addressed to "Building Supply Dealers"; Resp. Ex. 628 as a letter, dated August 19, 1929, from H. C. Gould, a dealer at Middletown, addressed to Alpha at Easton, Pennsylvania. The dealer had sent Resp. Ex. 628 to Alpha enclosing the circular letter from Lone Star.

23485 (RESP. EXS. 627 and 628 were offered and received in evidence.)

By Mr. Leisure:

Q. Directing your attention to Respondents' Exhibit No. 627, in evidence, Mr. Coogan, let me ask you whether or

not your company changed its policy in any way as a result of this Lone Star Cement Company policy?

A. We did not. We changed? No. We did not. We continued the same policy that we had sent out on August 18, 1926.

Q. Now, what was your experience with your own dealers with respect to this new, Lone Star policy?

A. This policy was very unpopular among the dealers. There was a great deal of complaint about it. As a matter of fact, as I remember it the Lone Star Company was forced to withdraw this policy at some later date.

Q. Prior to the announcement of this change in policy from the Lone Star Company had you had any discussions or conversations with any representatives of the
23486 Lone Star Company concerning this change?

A. No, sir; none whatever.

Q. When I say "you" I mean you or any representative of your company, to your knowledge.

A. Well, I cannot see how one of our executives would ever have had a conversation with the Lone Star Portland Cement Company and I do not believe they did because it was a matter that affected a department in our company under my direct control and, of necessity, I would have to know about anything that came up with regard to it. Therefore, I believe I can state definitely that there were
23487 no discussions or conversations with any representatives of the Lone Star Portland Cement Company and members of our company or myself, to my knowledge, with regard to this matter before it came out.

The witness identified Resp. Ex. 629 A-B as a circular letter, dated September 11, 1929, from the Lone Star Portland Cement Company, Philadelphia, Pennsylvania office addressed to all Lone Star dealers. It was sent in
23488 to Alpha by one of its salesmen.

(RESP. EX. 629-A and 629-B, was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, I call your attention to Respondents' Exhibit No. 629-A and 629-B, and ask you whether or not there was any subsequent change in your policy; that is, subsequent to that time?

A. No, there was no change in our policy, as I have stated previously, until about November, 1930. This ap-

nounces a change in the Lone Star policy which they had sent out on August 15.

Q. August 15. You do not say the year. We are talking about the same year?

A. August 15, 1929.

Q. Was there any difference in your trade discount or your cash discount during this period we have been discussing, in the different parts of the country where you did business?

A. No. In so far as the Alpha Portland Cement Company we followed the same policy from all of our mills.

23489 Q. Then, do I understand you, Mr. Coogan, that all of these announcements that we have been discussing did or did not affect your business in all of your markets?

A. Well, all of the exhibits that we have been discussing either of our own or of our competitors affected our business in all of the markets where we do business.

Q. When you say "exhibits" do you mean "announcements"? I used the word "announcements."

A. Announcements is what I mean.

Q. Now, I understood you to say that you made some change in November, that you said, I think you said, anyhow, 1930. Some change in November, 1930. Will you tell us what change was made in the dealer discount in 1930?

A. Well, the 10-cent dealer discount was discontinued by us on November 12, 1930. We followed the plan that had been circulated and followed earlier by the Lehigh Company, and referred to as the "Lehigh Plan," which gave the dealer a five cent discount, or a five cent rebate at the end of the year on all cement which was billed through him during the previous year. Now, in connection with that, I think I have stated before that our rules with regard to this five cent were somewhat different from those allowed or laid down by the Lehigh Company.

Now, that plan was, or that policy, was not followed by all of our competitors. I remember particularly
23490 that the Lone Star Company did not follow it. They continued with the 10-cent dealer discount, which they had reinstated some time in November—some time in September of 1926. They quoted, as far as I could find out, a price approximately five cents higher than the price that we were quoting, but they gave a 10-cent dealer

discount with it, instead of the plan which our company had adopted.

Now, that plan was rather short-lived. We put in, in November, 1930, that plan. It was not followed by all of our competitors, and some of the companies that had instituted or had adopted the plan began dropping it along in January of 1931.

The Alpha Portland Cement Company continued it, but we modified it at the end of January and instead of waiting until the end of the year to give the five-cent dealer discount, we started, on February 1, deducting that discount from the face of our invoice so as to not make the dealer wait for it, as the plan had already been dropped by a number of our competitors.

We continued that until, I think it was April 31, it was April 31—I am sure it was April 31—

Mr. MacIntyre: April 30?

The Witness: April 30. Thank you. As a matter of fact, our quotations were effective on May 1, as I remember it; at which time we entirely withdrew it.

23491 Now, the plan had been withdrawn by all of our competitors some time prior to the Alpha Portland Cement Company's withdrawal of the plan. In other words, even the Lehigh Company, which had originally instituted this plan, had discontinued probably at least one or two months before we did, and we found it impossible to carry on under it.

The witness identified Resp. Ex. 630 as a Lehigh circular letter, dated November 10, 1930, addressed to
23492 a dealer at Mechanic, New Jersey; Resp. Ex. 631 as a copy the same circular letter addressed to a dealer at La Plata, Maryland. One of Alpha's salesmen mailed in Resp. Ex. 630; the other, was mailed in to Alpha direct by the dealer; Resp. Ex. 630 does not have a date stamp; it was picked up by the salesman on the morning of the 11th, who telephoned the information to Alpha; Resp. Ex. 631 bears the received stamp "November 14, 1930".

23493 (RESP. EXS. 630 and 631, were offered and received in evidence.)

23494 By Mr. Leisure:

Q. Mr. Coogan, calling your attention to Respondents' Exhibit No. 630 and No. 631, had you learned that these new quotations and announcements had been established prior to November 12?

A. Yes, sir.

Q. And will you tell us how and under what circumstances?

A. When we had that report from several different sections of the country, from both our dealers and our salesmen on the morning of November 11.

Q. On the front page of Respondents' Exhibit No. 630 there are certain figures. Do you know anything about those figures? And, if so, will you tell us what they are?

A. In the case of Respondents' Exhibit No. 630 our office man has taken the delivered price and deducted therefrom the freight and the package in order to
23495 arrive at our net that would give us at our mill, and that from the figures on the other side of the quotation form it shows that it is a net reduction of eight cents per barrel.

By Mr. Leisure:

Q. Does that mean, Mr. Coogan, that the Lehigh Company accompanied this announcement of its new policy with any decrease in price?

A. Yes, sir. There was a decrease in price coincident with their announcement of that policy, and the quotations.

The witness identified Resp. Ex. 632 as an Alpha
23496 announcement, dated November 12, 1930, explaining the new selling plan which was adopted by Alpha on that date; Resp. Ex. 633 as an announcement similar to Resp. Ex. 632, dated November 12th, sent out by Alpha's Chicago office.

23497 Q. Mr. Coogan, following Mr. Wooden's suggestion, will you again look at Respondents' Exhibit No. 632, for identification, and Respondents' Exhibit No. 633, for identification, and tell us whether or not one came from Easton, Pennsylvania, and one came from some other place?

A. Respondents' Exhibit No. 632, for identification, came from our Easton, Pennsylvania, office, and Respondents' Exhibit No. 633, for identification, came from our Chicago office.

23498 (RESP. EXS. 632 and 633, were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, I want to call your attention to Respondents' Exhibit No. 630 and Respondents' Exhibit No.

631, as well as Respondents' Exhibit No. 632 and Respondents' Exhibit No. 633. Mr. Wooden just asked you if those two plans were identical. I would like to ask you, following that up, as to whether or not these announcements of the Alpha Portland Cement Company corresponded verbatim with the announcements of the Lehigh Portland Cement Company.

A. Well, I understood Mr. Wooden's question to ask whether or not there was any difference in our notice from the Easton, Pennsylvania, and Chicago, Illinois, offices, not whether any difference between the Lehigh Port-
23499. land Cement Company's announcement and ours, the Alpha Portland Cement Company?

Q. I am asking you the same question with respect to that announcement, your announcement, compared with the Lehigh Portland Cement Company's announcement; I am following up the same line of interrogation.

A. Well, I know that there was a decided difference in our announcement as compared with the Lehigh Company's announcement.

Q. Let me ask you, Mr. Coogan, in this way: Did you make any change in your plan from that issued by the Lehigh Portland Cement Company?

A. Yes, we made a substantial change in the
23500 plan in sending out our notices to our dealers.

Q. Will you explain your experience as to how that plan worked out differently from the Lehigh plan?

A. I do not think there was a great deal of difference as far as the dealers go, as between the two plans. I have never heard much comment from the dealers as to these particular provisions which we changed. Our change from the Lehigh plan was made on advice of counsel, and we thought it was better to use the plan in the manner in which we put it out to our customers.

Q. What were your reasons for following the plan inaugurated by the Lehigh Company?

A. The 10-cent dealer discount which had been in effect since 1926 had fallen into almost entire disuse. There was no dealer discount. On any jobs on which we quoted which went through a dealer we quoted, of course, our price with the dealer discount added.

Many times, in fact usually, we were underbid by our own dealers who, partly from their own volition and partly

because they were taught that way by the cement salesmen, began disregarding that differential.

In other words, they quoted, instead of using that ten cent, they quoted anywhere from one-quarter of a cent up. In fact, I have heard of some quotations a little less than that. So, that at the time the Lehigh plan was
23501 announced, while there was a dealer discount nominally in effect, as a matter of fact there was no dealer discount, and there was no real method of selling dealers so that when they announced that plan we were very glad to follow it and adopted it because we thought that it might show us a way out of our difficulties which we were having in making our bids through our dealer customers.

Q. What was your experience, if any, with respect to direct selling?

A. Of course, on any bids on which we quoted prices direct, while we had the dealer discount we quoted, except to States and to the Government where we deducted that, but we quoted on our ordinary work, we quoted 10 cents in our price above what we quoted to the dealer.

Now, if the dealer should shrink that dealer discount or give away part of it he would, of course, quote a lower price than we quoted directly to the customer in quoting a direct customer.

Now, in quoting to States and to the Government we deducted that dealer discount immediately from our quotations. In other words, we quoted to the Government
23502 or to the States just the same as to the dealer and gave the Government or the States the same price.

Trial Examiner Norwood: You gave the Government the dealer discount?

The Witness: Yes, sir.

By Mr. Leisure:

Q. Now, Mr. Coogan, you mentioned a price reduction. Did that have any relationship to the effect or to the fact that you followed this plan?

A. Well, of course with a price reduction coupled with the plan we were bound to meet the price reduction whether we met the plan or not.

As I have said, however, that after we received this plan and after we had picked it up and seen it we were very

much impressed with it and thought, perhaps, it might help us in a more orderly marketing.

Q. I do not recall whether or not you have told us whether it had any effect; that is, did it or did it not have any effect on direct selling?

A. Well, it would have an effect on direct selling because of this plan in or except in so far as the Government is concerned we would simply quote this same price that we were quoting to the dealers.

Now, of course anything that was handled direct by us to the job and did not go through a dealer, he would
23503 not get his refund on those shipments.

Q. Now, what was your experience, Mr. Coogan, as to what you actually accomplished by the announcement of this plan, or what you hoped to do with it?

A. Well, as I said, what we hoped to do with our plan was to get some method that was satisfactory to our dealers and which would enable us to market our cement in some sort of an ordinary basis or fashion. I might say that the plan was met with various receptions. Many dealers liked and approved the plan and backed it up.

Many others fought the plan, fought it very bitterly. I should say that probably in the majority of cases they fought the plan as it was not entirely satisfactory to dealers which, I think, accounts for its short life.

I have already told you that it began going out right after the first of January.

23504 The witness identified Resp. Ex. 634 as a National Builders Supply Association circular letter, dated October 14, 1929, and sent to all members of that Association, with a copy to him.

(RESP. EX. 634 was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, do you know whether or not all of your competitors followed this new Lehigh plan?

A. No, they did not all follow it. I have already
23505 mentioned that one of our principal competitors did not follow it. I think there are some others.

Now, I am only referring to the territory in which we compete. I know nothing about it in the far west, as far as the far west is concerned, or in the Rocky Mountain States. There was at least one or one or two others of the

less important competitors who did not comply with this plan as I observed it. That was my observation of the situation.

Q. You say you observed it. What do you mean by that? How did you observe it?

A. From the information that was picked up in the field and various circulars that were sent in to us and by reports from our salesmen. I think I picked up circulars from almost every company that adopted the plan.

23507 The witness identified Resp. Ex. 635 as a Universal-Atlas letter, Pittsburgh office, dated November 13, 1930; Resp. Ex. 636 as Universal-Atlas quotation, Pittsburgh, Pennsylvania office, dated November 13, 1930, to a dealer at Tonawanda, New York; Resp. Ex. 637 as Universal-Atlas quotation, Pittsburgh, Pennsylvania office, dated November 13, 1930, to a dealer at Williamsville, New York.

Q. Can you tell me whether that may indicate whether the Universal-Atlas Cement Company followed the dealer service payment plan or did not?

23508 A. Yes, because the circular letter dated November 13th accompanied the quotations in each case.

(RESP. EXS. 635, 636 and 637 were offered and received in evidence.)

The witness identified Resp. Ex. 638 as a Penn-Dixie quotation, New York office, dated February 13, 1931, addressed to a dealer at Pittstown, New Jersey. This quotation advised Penn-Dixie's customers that the

23509 dealer service allowance of 5 cents per barrel, announced by Penn-Dixie on November 11 1930 was discontinued.

By Trial Examiner Norwood:

Q. What did you do after you discontinued with respect to dealers' allowances?

A. We discontinued it, we made no dealer allowances. When we quoted directly on a job we quoted the same price as we quoted to the dealers. We made no quotations other than for ourselves or for our dealers, and any business that we handled through dealers we allowed them to make such quotations as they saw fit.

By Mr. Leisure:

Q. You told us you received the announcement from the other companies. I asked you whether or not this

is one of the ones that came into your possession as 23510 you have already described?

A. Oh, yes. This announcement of a discontinuance of policy; a good many people did it by—some by circular and some by simply a notation on their quotation forms.

(RESP. EX. 638 was offered and received in evidence.)

By Mr. Leisure:

Q. Have you already described it? I do not remember whether you went on to identify it, and how you got it; how it came into your possession.

A. This one was handed us by our salesman who covered Pittstown, New Jersey.

23511 The witness identified Resp. Ex. 639 as a Giant circular letter, dated January 24, 1931 stating that Giant had adopted the dealer service plan, and that they were now discontinuing it. It was sent in by one of Alpha's field men.

(RESP. EX. 639 was offered and received in evidence.)

23512 The witness identified Resp. Ex. 640 as a large circular letter, dated January 26, 1931, announcing the withdrawal of the marketing policy which Lawrence had adopted November 15, 1930. It is perfectly clear that Lawrence had adopted the dealer service payment plan.

(RESP. EX. 640 was offered and received in evidence.)

23513 The witness identified Resp. Ex. 641 as a Medusa quotation, York, Pennsylvania office, dated January 6, 1931. This announcement (Resp. Ex. 641) announces that this quotation is subject to the terms and conditions of the new marketing plan announced by Lawrence on November 15, 1930.

(RESP. EX. 641 was offered and received in evidence.)

Q. Mr. Coogan, calling your attention to Respondents' Exhibit No. 638, I observe there are certain pencil figures on the face of the document. Do you know what they are?

A. They are figures where we have figured out the net receipts from the mill where we would ordinarily ship this business.

Q. Do you know who figured it out? Is it in your handwriting?

23514 A. No. It is not in my handwriting. I would not say positively just who figured it out. It is someone in our office but I can not say who.

The witness identified Resp. Ex. 642 as a Coplay quotation, from Saylors Portland Cement Company, dated December 30, 1930 to a dealer at Paterson, New Jersey, referring to the new marketing plan described in Coplay's circular of November 20th. Coplay had adopted the dealer service plan in accordance with their circular letter of November 20th.

By Mr. Leisure:

Q. Did you tell us where you got this?

A. No.

23515 Q. Please do so.

A. That came to us from our salesman, our dealer at Paterson, New Jersey.

(RESP. EX. 642 was offered and received in evidence.)

The witness identified Resp. Ex. 643 as an Hercules circular letter, dated January 24, 1931, referring to the plan which they had put into effect on November 24, 1930 and notifying the dealers that Hercules was withdraw-
23516 ing this plan and that thereafter shipments would be subject only to the cash discount.

(RESP. EX. 643 was offered and received in evidence.)

By Mr. Leisure:

Q. I think you have already told us what the Hercules Company did and that they adopted this plan on November 24, 1930; is that correct?

A. That is what this circular so states.

Q. In other words, it is a fact that the Hercules Company did adopt this plan on November 24, 1930?

A. As this circular so states.

23517 The witness identified Resp. Ex. 644 as an Hermitage circular letter, dated December 24, 1930, announcing a change in their method of selling wherein was adopted what is usually referred to as the "dealers' discount".

23523 (RESP. EX. 644 was offered and received in evidence.)

The witness identified Resp. Ex. 645 as an Huron circular letter, dated January 1, 1931, which represents a

further change in the marketing plan which Alpha was using at that time.

23527 (RESP. EX. 645 was offered and received in evidence.)

23528 By Mr. Leisure:

Q. Before we go on, Mr. Coogan, I would like to ask you as to Respondents' Exhibit No. 644 and Respondents' Exhibit No. 645, as to how they came into your possession.

A. These were both sent in by our representatives in these respective fields, one by our representative in Tennessee and one by our representative in Michigan.

23529 The witness identified Resp. Ex. 646 as quotation from the "Lone Star Cement Company of Albany", dated November 11, 1930, addressed to their dealer in Syracuse, New York; Resp. Ex. 647 as a Lone Star quotation, dated November 11, 1930, to a dealer in Tonawanda, New York; Resp. Ex. 648 as a quotation from the Lone Star Albany office, dated November 11, 1930, addressed to a dealer in Norwich, Connecticut, which was received at Alpha's main office in the regular course of business, and which indicates clearly that Lone Star followed the dealer discount plan that they had used prior to November 12, 1930.

23531 (RESP. EXS. 646, 647, and 648 were offered and received in evidence.)

By Mr. Leisure:

Q. Now, Mr. Coogan, again calling your attention to Respondents' Exhibit No. 646, Respondents' Exhibit No. 647, and Respondents' Exhibit No. 648, did I understand you to say that the Lone Star Company did or did not adopt this method of a dealer service payment plan?

A. Well, those quotations would plainly show that they did not.

Q. Do you have any recollection or did it come to your attention in any way as to whether they followed the plan at a later date?

A. No. I know positively that they did not follow the plan.

Q. Now, as to these Lone Star quotations, the ones that you did observe, did they give the dealer any lower delivered price on cement than those of the Lehigh Company

and others that followed the Lehigh policy, and accompanying price reductions?

A. No. As I remember it, after the Lone Star had deducted their dealer's discount and assuming that the
23532 plan which we put in the following day, I think the prices were practically even at the point of destination.

Q. Does your answer mean then, Mr. Coogan, that they gained some advantage; the other manufacturers did not have to give similar advantages; or, what is your explanation of the entire matter?

A. Well, it is an advantage that they gained because they deducted and gave the dealer the benefit of the lowest price at that destination immediately, whereas the Lehigh, which was already in the field with that plan, had the dealer wait until the end of the year in order to give him his five cents.

Q. I would like to ask you, then, how does it happen that Lone Star was giving this advantage to its customers that your company did not give a similar advantage?

What have you in explanation of that, to say?

A. Well, we thought that our plan was the better plan for the dealer, and we felt that we would stick to it
23533 just as long as we could. As I have said before, the whole plan was very short-lived and some of the companies dropped it about January 1, and others through the month of January.

And, we maintained it just as long as we possibly could and then we were forced to drop it.

The witness identified Resp. Ex. 649 as an Alpha circular letter, dated January 31, 1931, to their dealer trade modifying Alpha's policy by stating that the dealer service payments, which it had originally paid at the end of the year "would be deducted from the invoice at the time of rendering on any dealer service statement which might be issued the dealer on shipments from November 12 to January 1, also they would be immediately paid rather than waiting until the end of the year."

23534 (RESP. EX. 649 was offered and received in evidence.)

By Mr. Leisure:

Q. Now, Mr. Coogan, can you give us the circumstances which caused this change in your policy?

A. Well, during the month of January there were many

companies, some beginning as early as the first of January, that had withdrawn from this plan, and had returned to a simple cash discount.

We felt that we wanted to keep our dealers in a position to compete so we decided to continue our practice of giving the dealer the benefit of deducting it from the
23535 invoice when they were rendered.

Q. How did you learn that? You state you learned it.

A. Well, I think there are some exhibits that already have been put in which indicate that many companies had withdrawn the plan.

Q. Did there come a time when the Alpha Portland Cement Company did finally revoke its dealer service payment plan? If so, tell us about when.

A. Yes, sir. We finally were forced to abandon that plan altogether. I think the date was May, 1931, but I am not quite sure of that. It may have been a month earlier than that.

Q. Mr. Coogan, I show you Respondents' Exhibit No. 650, for identification, and ask you whether or not that refreshes your recollection in any way as to the date when the Alpha Portland Cement Company revoked the dealer service payment plan.

A. Respondents' Exhibit No. 650, for identification, is a circular letter from our Eastern sales manager dated
23536 April 1, 1931, withdrawing the dealer service plan. My previous answer, that I was not quite sure whether that was on April 1, or May 1, now this definitely establishes it as April 1.

Q. That definitely refreshes your recollection as to that incident?

A. Yes, sir.

Q. And so that you had this policy at least partially in effect between what dates?

A. January 31, and April 1, and entirely in effect between November 12 and January 31, when we modified it.

Q. You are referring to different years. Will you mention those years?

A. We carried through the plan from November 12, 1930, to January 30, 1931—January 31, 1931. At that time we modified the plan and provided for an immediate deduction of the dealer service payment. We continued that

until April 1, 1931, at which time we abandoned the plan entirely.

Q. During that time what, if anything, was happening with respect to the competitive policies in connection with this matter?

A. Well, our competitors, I think, all of them that I knew anything about, had withdrawn the policy entirely some time before we did take that step.

Q. Well, now, as to that answer during that pe-
23537 riod of time between, say, November, 1930, which you have just mentioned and April, 1931, did your company follow the competitive situation with respect to the changes in this policy by other companies?

A. Between what dates, please, is that?

Q. Between November, 1930, was the one you gave as one date, and you give in March, the end of March, at least, as the other date, and I want to know what you observed, if anything, with respect to the competitive policies?

First, I want to ask you if you had observed anything and, if so, what you did.

A. Well, of course you have got two dates in there that you have to start off with—or periods, the one between November 12, 1930, and January 31, 1931.

As far as I know we followed, generally speaking, the prices that our competitors were making and deducted and carried along the five-cent rebate as a credit to the dealer which we expected he would deduct at the end of the year.

During January there was a lot of our competitors that dropped the plan and were quoting a price subject only to a trade discount.

Now, in quoting that price they quoted five cents less than the base that we were quoting, but we merely con-
tinued to do it and in that respect we were not meet-
23538 ing competition.

From January, 1931, until April 1, so far as I know, our prices or our quoted and invoice prices were five cents a barrel higher than our competitors, but we deducted five cents upon the face of the invoice during that time.

(RESP. EX. 650, was offered and received in evidence.)

Q. Mr. Coogan, I notice on Respondents' Exhibit No. 650, in evidence, in the second paragraph, a word has been X'ed out and then above that has been typed in the word

"lower"; above the crossed out word. Can you explain that?

A. Well, because "lower" is the proper word to be used there and the other was X'ed out and "lower" was used in place of "larger" because "larger" does not make any sense in the place where it was X'ed out.

23539 Q. Mr. Coogan, I show you Respondents' Exhibits Nos. 651 to 669, both inclusive, for identification, and ask you to look at them and tell us what they are.

A. Respondents' Exhibit No. 651, for identification, is a circular letter from the Bessemer Cement Corporation dated—

23540 By Trial Examiner Norwood:

Q. (Interposing.) Describe those generally without going into details of the particular papers.

A. Well, some of these are the withdrawing of the sales policies; some of them are modifications by some companies.

Mr. Leisure: Let me see if we can save some time. I merely wanted to save time.

By Trial Examiner Norwood:

Q. Now, all these papers that you picked up in the field, you got from your dealers?

A. Yes, they all came in from our dealers or had been picked up in the field and went into our home office, and they all have reference to what has been referred to as the "Dealers' service payment plan."

23541 Respondents' Exhibit No. 651 for identification, bearing date February 20, 1931, being an announcement of the Bessemer Cement Corporation.

Respondents' Exhibit No. 652 for identification dated January 23, 1931, being an announcement of the Universal-Atlas Cement Company.

Respondents' Exhibit No. 653 for identification, dated February 17, 1931, being an announcement of the Medusa Portland Cement Company.

Respondents' Exhibit No. 654 for identification, dated January 26, 1931, being an announcement of the North American Cement Corporation.

Respondents' Exhibit No. 655 for identification, dated January 26, 1931, being an announcement of the Edison Portland Cement Company.

Respondents' Exhibit No. 656 for identification, dated January 26, 1931, being an announcement of the Coplay Manufacturing Company.

Respondents' Exhibit No. 657 for identification, dated February 21, 1931, being an announcement of the Nazareth Cement Company.

Respondents' Exhibit No. 658, dated February 2, 1931, being an announcement of the Huron Cement Company.

Respondents' Exhibit No. 659 for identification,
23542 dated February 2, 1931, being an announcement of the Missouri Portland Cement Company.

Respondents' Exhibit No. 660 for identification, dated February 4, 1931, being an announcement of the Pennsylvania-Dixie Cement Corporation.

Respondents' Exhibit No. 661 for identification, dated February 14, 1931, being an announcement of the Vulcanite Portland Cement Company.

Respondents' Exhibit No. 662 for identification, dated March 2, 1931, being an announcement of the Pittsburgh Plate Glass Company.

Respondents' Exhibit No. 663, for identification, dated March 2, 1931, being an announcement of the Glens Falls Portland Cement Company.

Respondents' Exhibit No. 664 for identification, dated February 2, 1931, being an announcement of the Lehigh Portland Cement Company.

Respondents' Exhibit No. 665 for identification, dated February 2, 1931, also being an announcement of the Lehigh Portland Cement Company.

Respondents' Exhibit No. 666 for identification, dated February 11, 1931, also being an announcement of the Lehigh Portland Cement Company.

Respondents' Exhibit No. 667 for identification, dated
February 11, 1931, also being an announcement of
23543 the Lehigh Portland Cement Company.

Respondents' Exhibit No. 668 for identification, dated February 28, 1931, also being an announcement of the Lehigh Portland Cement Company.

Respondents' Exhibit No. 669 for identification, dated March 16, 1931, being an announcement also of the Lehigh Portland Cement Company.

23546. (RESP. EXS. 651 to and including 669 were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, I show you Respondents' Exhibit No. 661, in evidence. I observe that there are certain pencil figures on there. Do you know who made them, and what they are?

A. No, I do not know when or how or who made those figures. They were evidently made in our own office, however.

Q. Then, on Respondents' Exhibit No. 667, there are also certain pencil longhand writings on there, can you identify that?

A. Yes, sir, this is the manager of our Birmingham office, Mr. C. P. Postelle.

Q. Now, all of these exhibits that we have been discussing in regard to announcements, I do not have the exact number where they began, but around Respond-
23547 ents' Exhibit No. 627, on down to Respondents' Exhibit No. 667, you have been describing the regular course of business in which your representatives in the districts sent them into your office, the home office?

A. Yes, sir.

Q. I observe as to a. of these that they have to do with the eastern territory, is that also your regular course of business in regard to your western territory, your representatives sent in similar information as to the western territory?

A. That is right. As a matter of fact, some of these are probably southern territory.

Q. That is the eastern and southern territory?

A. Yes.

Q. I notice that. Did you follow the same practice in the western territory?

A. We do and did follow the same practice in the middle west.

23548 The witness identified Resp. Ex. 670 A-B as a two-page circular letter, dated March 16, 1931, sent from Lone Star's Philadelphia office to all of their dealers. It was sent in to Alpha by one of its salesmen in the Philadelphia district.

23549 (RESP. EX. 670-A, 670-B was offered and received in evidence.)

23553 Q. Mr. Coogan, I neglected to ask you when we received Respondents' Exhibit No. 650 a while ago,

whether or not that policy was made effective simultaneously in all territories served by the company?

A. It was. Yes, sir.

23554 Q. Mr. Coogan, you testified with respect to Respondents' Exhibit No. 650, that the Alpha Portland Cement Company thought that the five-cent discount plan was a good one when you adopted it?

A. Yes, sir.

Q. What was the position of your company as of April 1st, with respect to that? Did you still believe it was a good plan?

A. The Alpha Portland Cement Company still believed it was a good plan, but due to the fact that it had been dropped by all of our competitors at that time, we were forced, in order to make our customers competitive, we were forced to discontinue the plan.

Q. What is your recollection, if you have any, at that time? Does Respondents' Exhibit No. 650, the notice to your sales department, correctly state your reasons for abandoning it?

A. They do.

Q. Then, with the announcement of this policy, did you return or did you not return to the ten dealer discount?

23555 A. No, sir. We never returned to a dealer discount. We continued with only a cash discount, and quoted dealers, and when we did quote directly on any job we quoted the same price we were quoting to our dealers.

Q. Is that the way you are operating today?

A. Yes, sir. Oh, yes. That is the way we have operated ever since then, with changes from time to time as to classifications of business.

When this dealer service payment plan was discontinued by us, we went into a rather indefinite policy of quoting. In other words, we simply picked out certain jobs at certain times, as far as we could, and followed our competition as near as we could, but we had no very definite method of division of business.

23556 Q. Now, as I understand your present method is to use a discount; is selling on a cash discount?

A. Yes, sir.

Q. Have you found your present method satisfactory?

A. Well, of course, we have had two or three steps in that between 1931 and the present time. As I have said,

we continued a more or less indefinite policy from April 1, 1931, until the time of the N.R.A. Code, that it was originally approved. Now, that provided a classification of business.

Now, that classification of business was only in for something like two weeks at which time it was withdrawn or, rather, it was thrown out. After that we went on under more or less indefinite practices for classification of business. So far as I know, so far as our own company is concerned, we made efforts to continue to follow the recommendations, in fact, we made every effort to
23557 follow the recommendations and the policies that had been outlined in the original Code, and I think that that, generally speaking, is what we did. And that continued until some time early in 1935, at which time there had been a new policy stated by one of the companies and broadcast to the dealers generally—it was by the Lehigh Company—which policy seemed to be acceptable to the dealers.

Now, we followed that policy. We continued that policy until sometime in April, when they modified the policy and put more—a little more business in the dealers' hands, and we did that.

Trial Examiner Norwood: What original code were you referring to?

The Witness: The one approved on November 27, 1933.

Trial Examiner Norwood: N.R.A. Code?

The Witness: Yes, sir. The N.R.A. Code, yes, sir.

Mr. McFadden: Do you mean the first or the second N.R.A. Cement Code?

The Witness: It was the first one of the two.

23558 Q. Did you have a consumer differential in 1915, in case I am mistaken about your testifying in regard to it?

A. Yes, we did. We had a consumer differential in 1915 of five cents per barrel.

Q. Prior to 1915 through what channel was the great bulk of your shipments distributed?

A. Prior to 1915 the bulk of our shipments was distributed through dealers. There was not at that time as many large jobs as there were subsequent to that date or after 1920. And the dealer distribution was by far the most important part of it for us. As a matter of fact during that time probably 90 per cent of our business went through dealers.

23559 Q. Do I understand that prior to that time; that is, prior to 1915 you did or did not have large demands for shipments direct to customers?

A. There was no great demand. It was growing. It was beginning to grow at that time but most of our business was handled through dealers and they handled the resale of our cement.

That applied from the time that we did away with our distributors, which was in 1903.

Q. Well, what were the circumstances, then, Mr. Coogan, which led you to begin to sell to consumers at a price higher than you sold dealers in 1915?

A. Well, we had had at different times and from time to time some spasmodic efforts to establish dealer recognition. There were different methods at different times that were used but by 1915 that was the time we recognized the dealer trade and the time that we came in for dealer recognition, and I think that our company was the first. I cannot say that positively, but I think they were the first that came out with the announcement that they would recognize the dealer as quoting him one price and quoting a five cent higher price in quoting the consumer trade.

At one time in the interim, there was an effort on our part to classify our business by the size of the jobs. For
23560 example, a job over one size, or all jobs under a certain size we treated as one group and we tried to quote through the dealers. Then, we found that did not work because pretty soon every job was at least that large. So, we continued the trial and error method up until 1915, and we decided that a flat dealer's differential was the best thing for us, and was the best way for us to carry on our business.

Q. Do you know whether or not your competitors began to use the same policy at that time?

A. Generally speaking, so far as I know, they did that, yes.

23561 The witness identified Resp. Ex. 671 as a copy of a letter written by him on March 10, 1916, advising Alpha's sales department as to base figures to use in arriving at destination prices; Resp. Ex. 672 as a letter by him, dated March 10, 1916, notifying Alpha's sales department and salesmen as to the base figures to be used at various mills in making up destination prices that Alpha wanted.

23562 (RESP. EXS. 671 and 672 were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, directing your attention to the last paragraph in these letters, I ask you whether or not they have any relation to the Alpha Portland Cement Company's policy of a consumer differential?

A. Yes. That indicates that we had a policy at that time of a dealer differential in certain sections of five cents per barrel, and in other sections, particularly in the South, we were using a 10-cent per barrel differential in favor of our dealers.

Q. Now, you state you had a 10-cent differential in certain localities.

Will you tell us your reasons why you changed to a 10-cent differential in those localities?

A. Well, I presume—I have no definite information other than contained in those letters which were written by me, but according to my best recollection there was a differential which the dealers in that territory were using at that time and we observed it. Now, I think you will also find that we, shortly after that time, changed to a
23563 10-cent differential in all territories. I do not remember whether that was that rate, whether it was that rate, I should say, after 1916, but it was within a year or two after that. It was simply a development, and it was a trial and error method and we were feeling our ground, and handling our business the best we could.

Q. Well, was there any further change in those differentials prior to the time you adopted a 10-cent dealer discount in 1926?

A. Yes, sir. I have just said that that dealer discount was increased or—not dealer discount, but dealer differential was generally made 10 cents per barrel sometime between 1916 and 1920. I can not give the exact date. That dealer differential was continued until August 18, 1926, at which time the dealer discount was put in by us.

Q. Mr. Coogan,—

A. I think I ought to explain how we handled that differential.

Q. All right.

A. We quoted the dealer our price and if we quoted a consumer we quoted 10 cents a barrel higher than that

price. Whereas, after the dealer discount came in,
23564 we quoted them both the same price but extended to the dealer a dealer discount whereas we did not give the consumer a discount except in the case of purchases by public bodies.

Q. Now, Mr. Coogan, you told us that you thought in 1915 the differential in price in favor of the dealer over the consumer was a fair practice, yet you told us in 1931 your company abandoned any form of discount. How do you explain those two statements?

A. I still think—personally,—that it is a fair and equitable method of doing business. But, you must not forget that that has been a change, in fact there has been a change and a distinct change in the trend of business. That is, there are many more direct sales made today than there were in 1916, or thereabouts.

The difference in the character of the business makes a decided difference and I do not think that under the existing circumstances that it would be possible or practicable to maintain the dealer differential. I think we have to go more to the classification of business which is handled through dealers and that for which we quote direct.

23565 Q. Let me ask you, Mr. Coogan, whether or not the Alpha Portland Cement Company divides its customers into classes?

A. Well, I do not believe you can say now that we divide our customers into classes except that we quote to dealers because we only quote one price. If we quoted direct on any business we quoted exactly the same price as we quote to our dealers so now outside of recognizing those that are building material dealers and selling to them, it seems to me it goes more into the classification of business than the classification of customers, although there is some of both in it.

Q. How long has your company classified its customers, as you have described?

A. Well, we have classified dealers since we did away with distributors in 1903. We have had to have an understanding in our company as to whom we would sell and who was and who was not a dealer ever since that time because, as I have explained, there have been various times when we have tried to find the correct method of marketing our cement; that is especially true in the first twenty years.

Q. Well, what is your practice? Did you or did you not confine sales to dealers except for certain classes of customers to whom, as you say, you sell direct? What is your practice in that regard?

A. We confine our sales to dealers except for certain classes of customers and for certain specified work.

Q. How long have you done that?

A. Well, we have done that more or less for a great many years. It goes back almost to the start, to my start in the business, in one form or another. Well, it differed over the years, of course.

Q. Well, now, is the division of work which you would sell direct, and which you would sell dealers the same as it was since 1915, and has it been the same all of the time since 1915?

A. Oh, no. There has been a decided change from time to time. There is much more work sold direct now than there was in 1915.

There has been a decided increase, of course, that is partly brought about by the fact that there are more large jobs and more jobs on which, perhaps, the dealer does not perform the service, or where we have increased our classifications of those jobs, and there is much more direct selling to do in them than there ever has been.

Q. Would you say that your policy in that regard has been definite at any one time, or have you had different methods in operation at that time, Mr. Coogan?

A. Oh, I see. Well, during certain parts of our experience we have had different methods at the same time, but as it stands at the present time we are using—pretty well using one method. As a matter of fact, it would be quite difficult to put down or have two methods working concurrently.

Q. That is what I meant by my question; whether you had two methods in operation at the same time, or whether you would use one method and then use another later on.

A. If you put in one method and use it for a year or as long as you feel like it, you can not very well at the same time be trying any other method.

As I have stated before, it is largely a matter of trial and error, and it has been worked out as to what is the best means of marketing cement.

Q. What I want to know is, although there have been

changes as you have described, and although changes have taken place since 1915, has it been definite, any change in your policy?

A. Yes, whenever the Alpha Portland Cement Company puts in a policy we try to make it definite. At times, that was particularly true immediately after Article XI was taken out of the code, there was a little uncertainty, and while, as I stated before, we made every attempt to follow literally the provisions of Article XI, there was some particular case or cases when we met competition and
23569 we were not able to do it.

The witness identified Resp. Ex. 673-A-D as a letter of instruction sent to Alpha's sales department May 25, 1916, stating the methods of sale which would be used by Alpha quoting on business. It shows the classification of customers and also the division of business by Alpha as of that date.

23570 (RESP. EX. No. 673-A, 673-B, 673-C, 673-D was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, I notice on page 3, which is Respondents' Exhibit No. 673, now in evidence, you have set up a definition of a dealer. That is set out there.

Can you tell us whether or not the Alpha Portland Cement Company had a definition of a dealer at any earlier time than this?

A. Oh, yes. We have had a definition of a dealer immediately after we did away with distributors, which was in 1903, the beginning of 1903.

The witness identified Resp. Ex. 674 as a letter from him, dated March 21, 1916, to Alpha's sales department and the salesmen.

23571 (RESP. EX. NO. 674 for identification was offered and received in evidence.)

By Mr. Leisure:

Q. Does that exhibit relate to the matter of the dividing of your customers, Mr. Coogan?

A. Yes, it relates to a classification of customers.

Q. Going back to your letter of August 24, 1918, which was marked Respondents' Exhibit No. 527, let me ask you whether that related to or whether you were addressing your attention at that time to the subject matter of divid-

ing your customers? Can you refresh your recollection from that exhibit?

A. Well, I should think that was or would more properly be called a classification of business, rather than a classification of customers, because it refers to a business of a particular kind of plants, like industrial or concrete pottery plants, municipal or county or state requirements; this is simply a change in the method of quoting them and advising that we would take jobs only when the jobs were definable jobs, and discontinue taking requirement contracts.

Q. Have you been able to find any further documents on the subject at or about that date?

22572 A. No. I turned over to counsel all of the documents that I have been able to locate relating to the different policies that we had or were in effect by the Alpha Portland Cement Company.

Now, during the early days, I have stated it was a trial and error method. We simply went along and tried out these things and tried to do the best we could to market cement.

Of course, the marketing of cement was quite different in 1916, 1917, 1918, from what is in 1939.

There has been quite a decided change in conditions. In other words, a dealer has to a certain extent dropped and disappeared out of the picture. The ready-mixed plant has appeared, and the concrete products plant has developed. It is quite different today from what it was.

Q. You say 1916 to 1918. That brings up the subject concerning which I intended to ask you. None of these papers makes any reference to sales to the United States Government. Do you recall how you sold the United States Government?

A. We have always sold the United States Government at the lowest price which we quoted to anybody except since the emergency relief organizations have been doing quite some buying, we have, in so far as possible, tried to quote them through our dealers.

Otherwise, the sales to United States Government are at the lowest commercial prices that we were quoting

22573 at that particular time, and in one or two cases that I happen to know of, they were somewhat lower.

The witness identified Resp. Ex. 675 as a letter from the chief clerk of Alpha's sales department, dated December

22, 1925, addressed to all of the other members of the sales department, notifying them of a change in Alpha's methods of quoting to state institutions. It refers to a classification of business because it indicates that Alpha had been selling state institutions direct, and in the letter, "we notify our people to discontinue that practice and instead handle such business through our dealers in the future."

23574 (RESP. EX. NO. 675 was offered and received in evidence.)

By Mr. Leisure:

Q. Does this Respondents' Exhibit No. 675 in evidence show any change in the development of your policy of division of business, Mr. Coogan; do you recall?

A. Well, it shows the business which we had heretofore handled direct, after that date a certain kind of business, that particular kind of business was handled through dealers.

Q. What is covered by "State Institutions" in this exhibit?

A. Well, "State Institutions" are State hospitals and asylums and institutions like that which are very often located in or immediately adjacent to towns in which localities we had dealers.

Due to the representations of our dealers as to the methods employed by institutions in their purchases, we decided that we would change our policies in that respect and handle such business through dealers.

Q. Would this Respondents' Exhibit No. 675 represent a document that was sent out to customers or to your competitors?

A. No. To neither one. It was sent only to our own organization.

23575 Q. Have you been able to find any documents between 1916 and 1925 which would further illustrate your policy during that period or your changes in policy?

A. No. All of the memoranda and data that I can locate was gathered together at one time and submitted to counsel and gone over with them. I do not know where there is anything else that would have any bearing on this subject during those years.

Q. Can you recall your exact classifications during that period?

A. Do you mean classification of business?

Q. Yes.

A. No, I would not want to attempt to recall this, at this period.

The witness identified Resp. Ex. 676 as a letter, dated November 18, 1927, written by the chief clerk in Alpha's sales department, and sent to all branch managers and salesmen in Alpha's employ; Resp. Ex. 677 as a copy of a letter, dated November 25, 1927, written by the chief clerk in Alpha's sales department to the other members of the sales department. These instructions were sent out under his direction.

23576

Q. Were you attempting to change the Alpha Portland Cement Company's sales policy concerning its division of customers?

A. Yes, sir.

Q. Or division of work?

A. Yes, sir. These two letters indicate that we were making some changes at that time."

Q. Suppose you tell us what was attempted to be changed in the sales policy there.

A. Our letter of November 18th was sent out to all branch managers and salesmen. It provided a change in the method of quoting railroads, it provided a change in the method of quoting contractors doing city or county

23577

highway work. It showed a change in quoting concrete products plants, a change in quoting hydro-electric plants. Those are all the changes which are designated in the letter of November 18th.

Q. And the other one?

A. Now, our letter of November 25th indicates that the changes, while not strictly general through our trade, they were transmitted to a good many customers by our field men and we got unfavorable reactions on them, and that unfavorable reaction was large enough so that under date of November 25, notwithstanding the fact that some of the companies had used the policies outlined in the letter of November 18th, we withdrew our instructions issued in the letter of November 18th, and reverted to the policy which we had in effect prior to November 18.

(RESP. EXS. 676 AND 677 were offered and received in evidence.)

23578 Washington, D. C.,
September 20, 1939.

23579 F. M. COOGAN was thereupon recalled as a witness for the Respondents, and, having been previously sworn, testified further as follows:

Direct Examination by Mr. Leisure (Continued).

Q. Mr. Coogan, when we adjourned last evening we had just offered in evidence Respondents' Exhibits 676 and Respondents' Exhibit 677.

23580 A. Yes, sir.

Q. I note in that you state that in the future railroads will be quoted on the same basis as a dealer?

A. Yes, sir.

Q. Do you remember how the railroads were quoted prior to this announcement in November, 1927?

A. Yes, sir.

Q. How?

A. Prior to this announcement we had been attempting to sell the railroads on the same basis that we were selling other consumers. We had many complaints about it. I, personally, had a talk with the purchasing agent of one large railroad company and he explained to me their difficulties; the fact that we were quoting them our consumer price, and in some cases when they wanted to buy cement at a particular destination he was able to get the dealer at that particular destination to cut his differential, and buy it cheaper than we were selling it to him. I do not think they had any desire to buy it that way, but nevertheless they wanted their records clear so that they could prove that they bought at the lowest price and that, in connection with the unsatisfactory method of considering them "consumers", led us to, at that time, change over and quote them under our dealers' price.

Q. Prior to this letter of November 9, 1927?

A. Yes, sir. This indicates prior to that time we

23581 had quoted them as consumers.

Q. What exhibit is that?

A. Respondents' Exhibit No. 676.

Q. Prior to the issuance of Respondents' Exhibit No. 676, did you have any policy with respect to how you would sell the railroads? Was it a definite policy?

A. Yes, sir. We sold the railroads prior to that time on the same basis that we sold other consumers.

Q. Calling your attention to Respondents' Exhibit No. 677. Will you tell us whether the policy enunciated by Respondents' Exhibit No. 676 continued in force?

A. Well, this Respondents' Exhibit No. 677 partially—in fact, practically held in abeyance the instructions given under date of November 18. However, that would not apply to the railroads because while this was addressed to our salesmen the railroads' inquiries are handled in our general office. I think that while there was an exception made from this in other types of work, I am inclined to think that we continued to quote railroads on our dealers' basis.

Q. I notice, also, on this Respondents' Exhibit No. 676 that contractors on State or county highway projects may be quoted on the same basis as the dealer. It says, "Providing such action on your part will not conflict with the established Alpha dealers." Can you tell us how you sold contractors on State and county highways prior to this announcement?

23582 A. Prior to the announcement we sold them through the dealers.

Q. Was that your definite policy, or was it not?

A. That was the definite policy up until that time.

Now, I want to call your attention to the fact that that provision in there of not interfering with dealers does not make a new policy, an absolute one; in other words, we did not attempt to quote on highway work at a point where we thought it would interfere with our dealer connections. Of course, you will notice I have said before that there was such a protest went up, to our new policies, that they were held in abeyance. I think in about a week after we originally sent them up it went up.

Q. This exhibit further provides,—I refer to Respondents' Exhibit No. 676,—"that concrete products plants may also be quoted on the same basis as the dealer providing such action will not conflict with established Alpha dealers." Did you sell them through the dealer previously to this announcement?

A. Yes, prior to that time we sold them through the dealer. It was our opinion that there should have been some change in there because a good many dealers were competing with by putting in block plants and they were buying their cement as dealers and the fellow who was running an independent block plant was not able to buy on the

same basis. That was the reason we felt some change
23583 should be made in the handling of that type of business.

Q. Would you say that was or was not the regular policy to sell in that way during that time?

A. Well, prior to that time we had sold them all through dealers.

Q. That was your policy at that time?

A. There, again, there is a qualification in there which means that that policy at that time might operate in some case and might not operate in another case.

Q. The same exhibit, Respondents' Exhibit No. 676, provides that "Hydro-electric plants may be quoted on the same basis as a dealer."

Prior to that time did you make hydro-electric plants buy, or did hydro-electric plants buy through dealers prior to this time?

A. May I see that a minute, please?

Q. Yes.

(Witness inspects Respondents' Exhibit No. 676.)

Q. Can you answer the question now?

A. Yes. Prior to that time hydro-electric plants were sold through dealers.

Q. Again, was or was not that a definite policy on the part of the Alpha Portland Cement Company?

A. It had been a definite policy.

Q. Can you tell us, Mr. Coogan, whether or not at
23584 the time of this letter of November 18, 1927—what was the percentage you were selling through dealers at the time of this letter of November 18, 1927?

A. Well, prior to 1927 we were selling from 85 percent to 90 percent of our cement through our dealer distributor channels.

Q. Did you make any attempt to sell more direct, more work direct?

A. Well, there was a distinct trend in the case of our company toward more direct selling.

Q. What experience did you have as to that?

A. What was that?

Q. What was the result of that?

A. Of course, these exhibits show that our attempt in this respect, which we sent out on November 18, had to be recalled just one week later because our dealer trade found so much fault with it, and there was other evidence that it

would interfere with our business, and we were forced to withdraw our instructions.

Q. Now, you mentioned a trend toward more direct selling.

A. Yes.

Q. How long did that continue? Down to when?

A. Well, that trend towards direct selling had a very definite trend beginning shortly after the 10-cent dealer discount was put in effect in 1926. It became more pronounced as the years went on, and we reached the
23585 climax in about February or in November, 1930. At that time there was a new policy instituted by us covering what was referred to as the dealer service plan, instead of the dealer discount.

The witness identified Resp. Ex. 678 A-B as a letter, dated November 7, 1931 sent out by Alpha's eastern sales manager in accordance with instructions from him and under his direction.

23586 (RESP. EX. 678-A and 678-B was offered and received in evidence.)

23587 By Mr. Leisure:

Q. In this Respondents' Exhibit No. 678-A and 678-B in evidence now, Mr. Coogan, you point out a certain policy concerning direct sales and through dealers.

A. Yes.

Q. Did you publish any such statement of that policy to your trade at that time, or prior to that time?

A. No, I did not.

Q. Do you know whether or not your competitors published such an announcement?

A. I think some of our competitors—in fact, I think most of our competitors did publish some sort of a trade policy.

Q. Do you have any recollection as to whether or not that your dealers sent them in as you have testified in previous instances?

A. Well, I am sure that if they were in the field that our dealers sent in some of them, as they always do. If they were sent out in the field by our competitors there is not the slightest doubt in my mind but what our dealers and our fieldmen sent them in. They always do that.

23588 The witness identified Resp. Ex. 679 as an Edison circular letter dated February 18, 1931; Resp. Ex.

680 as a Lawrence announcement to dealers dated February 21, 1931; Resp. Ex. 681 as a Giant circular letter dated February 21, 1931; Resp. Ex. 682 as a Giant circular dated February 24, 1931; Resp. Ex. 683 as a mimeographed letter from the Universal Company, Chicago, Ill., dated March 6, 1931; Resp. Ex. 684 as a Penn-Dixie circular letter without date bearing Alpha's received stamp showing that it was received some time in March 1931.

23589 Q. How did these come into your possession?

A. Some of these bear notations as to the source from which it came. Taking them in order, one is from our Boston office; one is from Mr. Santee, one of our district managers; another one is from Mr. Santee, one of our district managers; one is from our Syracuse, N. Y., salesman; and the other one bears no notation.

Q. Did you, from these exhibits which you have mentioned, gain information as to the work that the companies mentioned would sell direct and the kinds of work that they would sell through dealers?

A. Yes, these are announcements of the sales policies of these various companies. According to our reports from the dealer and the field at that time, there were some other companies that had made announcements, but these are all the announcements that I was able to pick up from our records.

23592 (RESP. EXS. 679, 680, 681, 682, 683, and 684 were offered and received in evidence.)

By Mr. Leisure:

Q. I show you also exhibits previously marked in this case, Respondents' Exhibits Nos. 651, 653, 662, 663, and 670-A and 670-B, also 657. I ask you whether or not you also gained information, as you have described, respecting the kind of work that these competitors were doing; whether they were selling direct and the kinds of work they were selling through dealers, as a result of having received those exhibits?

A. All of the exhibits referred to are announcements of the selling policies setting classes of work which the companies would sell direct, and these include an announcement from the Medusa Company, the Pittsburgh
23593 Plate Glass Company, the Glens Falls Portland Cement Company, and the Nazareth Cement Company.

Q. Mr. Coogan, did your company make any similar public announcement of policy at this time?

A. No, sir; we did not. I might say there that during this time we tried to keep our policy as flexible as possible so that we could meet the competition of other manufacturers and at the same time so that we could keep our dealers in a position to meet competition of other dealers that were handling cement. We did not feel, under the existing circumstances in our industry, that we could come out with any definite policy at that time, so we simply followed market conditions as we found them.

Q. Was there any further change in your policy with respect to direct sales and sales through dealers, say, from the time of this circular to your sales department in November, Respondents' Exhibit No. 676, down through, say, to the approval of the N.R.A. Code in December, 1933?

A. There was no change in the Alpha Portland Cement Company's policy at all until the effective date of the Code. Now, at that time we were allowed to talk to our competitors, and even our customers, and there was an article worked out which was put in the Code which seemed to crystallize what was considered the best practice of the industry at that time, and that was included in the
23594 N.R.A. Code, and referred to as Article XI. After that, and while that remained in effect, why, of course, we observed all of the policies set out in the Code, but that particular paragraph, as I remember it, was only in the Code a few weeks and then at the insistence and complaints of dealers and dealer organizations it was canceled by the N.R.A.

Q. Do you recall what kinds of work were to be sold direct which caused these complaints which you have mentioned?

A. Well, I would like to have a copy of the Code if I am going to testify to that. Of course, the dealers really wanted all kinds of work sold through the dealers. That was their prime motive. There were extended hearings held by the N. R. A. before that section was eliminated from the Code. There were contractors who appeared, and concrete products plants who sent their representatives, and the dealers had many representatives there to present their case. In the end the provisions of the Code as contained in Article XI were canceled.

Q. When it became effective did you change your classification?

A. Generally speaking, Article XI of the Code followed

the practices—Article XI of the Code, in general, was about the same methods which were being pursued by the Alpha Portland Cement Company prior to that time. Now, we had made no statement of our policy, and, as I have stated before, our policy was a little flexible in spots,
23595 but, generally speaking, Article XI covered what we had been doing prior to the Code.

Q. What happened when it was suspended, as you have described?

A. It was suspended, as I remember, some time in the latter part of 1933, and again the Alpha Portland Cement Company did not issue a statement or policy, but generally we acted on and we kept on trying to follow the provisions of Article XI, but we had to have a little flexibility, and we used it where we thought it was advisable or necessary, but in a general way we continued to follow the provisions of Article XI of the Code.

Q. Did there ever come a time when you issued a printed announcement of your policy?

A. Yes, some time in February of 1935. We had been pressed very hard by many of our dealers for some definite policy or for some definite statement of policy as to what we would or would not sell direct. We had them ever since Article XI had been canceled, and, as I remember it, early in February, 1935, there was one company, the Lehigh Company, that issued a trade policy which was sent out to the dealers and contractors generally.

Now, these inquiries indicated,—our inquiries, I mean,—indicated that while that policy was not all that the dealers wanted it did seem to satisfy the dealers, as far as we could learn, and shortly after we had found that
23596 policy we came out with a similar policy. I do not know that it was exactly in every word the same but it was similar to that policy that was issued by the Lehigh Company several days before.

Q. Mr. Coogan, I want to show you Commission's Exhibit No. 731-4F, dated February 23, 1935.

A. Yes.

Q. I will ask you whether or not that in any way had anything to do with your policy, and, if so, what it was?

A. Well, this exhibit, Commission's Exhibit No. 731-4F, is a statement of the policy of the Alpha Portland Cement Company, dated February 23, 1935, and states the definite

policy as to what we will sell through dealers and what we will sell direct.

Q. Now, you gave us the period of time in which you told us that your company made no public announcement of that policy.

A. Yes, of our policy we made no public announcement.

Q. Will you tell us how you happened to issue that policy at that time?

A. After the Lehigh policy was announced there was even more insistence than ever on the part of our dealers that we do something definite about our selling policies, and they indicated to us, as I have said, that while the Lehigh policy was not all that they wanted, that it was fairly satisfactory to them, and after getting these complaints and these demands for a statement we decided to

23597 come out and issue a policy and circulate it among all of our trade.

Q. On the question of time, Mr. Coogan, how long, in the ordinary course of business, does it require for you to learn of your dealer reaction in this way?

A. Well, we learned—we have an immediate dealer reaction as soon as a price or a policy of an important competitor company reaches them; sometimes we have them by phone, sometimes we have them by letter, sometimes we have them by our salesmen or through our salesmen, and sometimes in other ways we get that information. We have dealers located very close by, and if they get a new policy they will phone or they will even come in to talk it over or telephone us and ask for somebody to step in to see them. It is no trouble. I should say that we get that information certainly the following day.

Q. Well, now, as to this Lehigh policy, what was your experience? Was it satisfactory, as far as your company was concerned?

A. Well, in a general way, it did not exactly meet everything, but we felt that on the whole that it was a good fair policy, and we were quite willing to adopt it.

Q. Now, I notice that under this policy the United States Government is sold direct on all work excepting purchases for federal emergency or unemployment relief agencies. Is that your policy today?

23598 A. It is.

Q. Mr. Coogan, this policy, now that you have

just been referring to,—I believe this is Commission's Exhibit No. 731-4F,—is dated February 23, 1935.

23599 A. Yes.

Q. Did you issue that during the Code period?

A. Yes, that was issued during the Code period.

Q. Was it, or not, different from the policy prior to 1915?

A. Prior to when?

Q. Prior to 1915.

A. Well—

Q. I was talking about the relationship of the Federal Government in the preceding question before this discussion ensued.

A. Yes. There was an exception there, because in 1915 we had no emergency relief organizations to deal with, we dealt with only the regular departments of the Government, and all of those were quite different; all of those were quoted directly. That is what I mean, all of those were quoted directly.

Q. Were any of such agencies in existence prior to 1935?

A. No, I think they went in in 1935. I think that the emergency relief organizations probably came into existence probably the latter part of 1934, but I am not quite sure of the date, but so far as importance in purchasing is concerned, it appeared early in 1935.

Q. What is the reason for selling emergency or unemployment relief agencies through dealers rather than direct?

23601 A. Our reasons are that the work, generally speaking, is carried on,—as carried on by the emergency relief organizations—is work that would ordinarily be handled through dealers. A great deal of it is located within city limits and a great deal more is handled in small lots, and it is business that prior to these organizations had always been handled through dealers, and it was our judgment that it was proper business for a dealer to handle, and we decided to handle it that way.

By Mr. Leisure:

Q. Where are your dealers normally located, Mr. Coogan?

A. Well, of course, our dealers are located all over the country in all cities, towns, and villages.

Q. Is this policy with respect to comparatively
23652 small jobs located within cities, towns, and villages
of selling through dealers a new practice, or one
that you have had in effect for some time?

A. No, such work has been handled through dealers ever since I can remember.

Q. How do you sell projects by Government agencies except federal emergency or employment relief agencies?

A. We sell them direct.

Q. I notice on Commission's Exhibit No. 731-4F, your policy of February 23 provides for direct sales to counties and parishes except on bridges and culvert work which were not awarded as part of highway contracts; that where the jobs were let separately you sold it through the dealer. What is the reason for this difference?

A. Both counties and cities have a great deal of small culvert and bridge work which really requires dealer service, and we thought it was only right and proper that on such jobs as that that as long as that is not let as an integral part of a State highway contract, that that should be handled through a dealer where the usual requirements are small deliveries which require such deliveries from time to time, and in many cases the contractor cannot even take carload deliveries and must depend upon the dealer for his supply of cement as well as other materials.

Q. What would you say your experience at the
23653 time was, Mr. Coogan? Did you consider the policy
more favorable to the dealers or less favorable to the dealers than Article XI of the Code? I am referring to the exhibit—it is Commission's Exhibit No. 731-4F, dated February 21, 1935.

A. Well, we thought that that policy was probably just a little more favorable to the dealers in Article XI, but I do not know unless I would compare the two side by side.

Q. Then from your past experience in similar transactions, what have you to say as to when this Lehigh policy—this more liberal policy was announced by them changing the method of selling under Article XI? What effect would that have had if you had not made a similar change in your policy?

A. Well, we would have lost a great many of our dealer customers and eventually lost a large amount of business.

Q. Well, I notice that this policy of February 23,

1935,—this same exhibit, Commission's Exhibit No. 731-4F,—there you were providing for direct sales to railroads. How long has that been your policy?

A. That has been our policy for many years with railroads. I think we showed here it was in 1918, or thereabouts, that we had sold the railroads direct. Dealers never had very much complaint about direct sales to railroads.

Q. Did that change in any way Article XI as to what you had done before?

A. No, it did not.

23604 Q. Now, this exhibit, Commission's Exhibit No. 731-4F, further provided for direct sales to water power and water supply departments only when such work was located outside of cities, towns, or villages; was that any change from Article XI?

A. I would prefer to have Article XI before me before I would state that.

Q. What was the reason for that policy? I will show you now Commission's Exhibit No. 731-4F.

23605 A. Well, our idea in this case was that the water power and water supply departments, generally speaking, is located outside of the city, town, or village; that it is located out in a section of the country where dealer service is perhaps not required, and we felt that it was proper under those circumstances to make direct sales to that class of work, but if by any chance such work was located entirely within a city then we felt that it was proper dealer business, and should be handled through them.

Q. Now, you mentioned "dealer service," Mr. Coogan. What do you mean by that?

A. Well, a dealer performs an active service in 23606 the distribution and sale of cement. He carries stocks on hand; he makes deliveries when and as required; he takes care of local requirements in his town; he takes care of credits, and all other matters which a dealer usually performs.

Q. Would you say that a manufacturer is or is not in a position to perform those dealer services?

A. A manufacturer cannot perform the services performed by a dealer.

Trial Examiner Norwood: That is as to small orders, and so forth?

The Witness: As to the small orders and as to delivering from the cars to the site of the job. Very often even on a large order it must be transported from the railroad siding to the job. Now, in a great many cases a great many contractors do not have facilities for doing that, and they prefer to do their business through the dealer.

By Mr. Leisure:

Q. Well, is it your experience that a dealer is or is not a valuable connection between the manufacturer and the normal work that comes up in cities, towns, and villages?

A. A dealer is a very valuable connection for a cement company. I have told you that I remember in our industry—in our own company—when we handled 90 percent of our business through dealers. Now, there has been a trend towards more direct business, partly brought
23607 about by the jobs being larger, and different classes of work, and also competition on the part of manufacturers. Because, if one man, or an important competitor should decide to quote a certain kind of a job direct, why, we have nothing to do except to either meet that or to forego any chances of getting their business, because my dealer cannot quote a price in competition with a direct consumer price made by another company. He must have some profit if he is going to remain in business.

Q. Again directing your attention to Commission's Exhibit No. 731-4F, which is dated February 23, 1935, after this time did you subsequently issue a new policy concerning direct sales?

A. Yes, after that policy was sent out by us we had a great many complaints, especially in the Middle West, as to some of the provisions in this sales policy, and we were besieged by many of our customers to broaden the business which would be handled through dealers. Of course, some of them were extremely broad; some of them were extreme and wanted all business to be handled through dealers. Each one had his pet hobby.

23608 Q. Does that complete your answer as to the reasons for the issuance of this new policy, Mr. Coogan?

A. No, it does not.

Q. Please do so.

A. That new policy was not original with us. The policy had been portrayed by another company. After they

broadcasted that policy we immediately followed that policy and sent out a new notice stating what our policy would be from that date.

Q. Do you know what company that was?

A. It was the Lehigh Company.

23609 The witness identified Resp. Ex. 685 as the new selling policy adopted and put out by Alpha on April 8, 1935.

Trial Examiner Norwood: The document referred to may be received as Respondents' Exhibit No. 685 in evidence.

(RESP. EX. 685 was offered and received in evi-
23610 dence.)

The witness identified Resp. Ex. 686 as a circular letter, dated March 18, 1935, sent to Alpha by the Virginia Lumber and Building Supply Dealers Association; Resp. Ex. 687 as a continuation of the letter from the Virginia Lumber and Building Supply Association; Resp. Ex. 688 A-B as a two-page letter, dated March 16, 1935 addressed to Alpha at Easton, Pennsylvania, from the New England Building Supply Association; Resp.
23611 Ex. 689 as an enclosure sent with Resp. Ex. 688; Resp. Ex. 690 as another enclosure sent with Resp. Ex. 688; Resp. Ex. 691 A-B as a copy of a letter, dated March 7, 1935 addressed to Alpha's St. Louis, Missouri office from the Southeast Missouri Retail Lumber Dealers Association.

Q. Let me ask you first, Mr. Coogan, whether this April policy, Respondents' Exhibit No. 685, made any change in your previous policy?

A. Yes, our policy of April 8 made some changes in the policy which was issued February 23.

Trial Examiner Norwood: Received as marked.
23612 (RESP. EXS. 686, 687, 688-A, 688-B, 689, 690, and 691-A, 691-B, were offered and received in evidence.)

The witness identified Resp. Ex. 692 as a letter from Alpha's Chicago office, dated April 22, 1935 to the general sales manager at Easton, Pennsylvania; Resp. Ex. 692 A-B as a two-page circular letter, dated April 15, 1935, sent out by the Building Material Merchants of Chicago District to all members of that Association.

23613 Trial Examiner Norwood: Received as marked.

(RESP. EXS. 692, 693-A and 693-B were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, calling your attention to Respondents' Exhibit—I beg your pardon—Commission's Exhibit 731-4F, and Respondents' Exhibit 685, I want to ask you whether, to your knowledge, these changes that you have described, were the result of any agreement or understanding between your company and any of your competitors?

A. They were not.

Q. Does the same answer apply to your dealers, as to any agreements with your dealers?

A. There was no agreement with our dealers. We listened to everything the dealers had to say, but we positively made no agreements with them.

Q. Now, I want to ask you, Mr. Coogan, what has been your experience as to this division of business that you follow today whether or not it is satisfactory from your company's point of view?

23614 A. Well, generally speaking, I should say that it is highly satisfactory. You will find here and there a case where you might feel that our policy is a little inequitable, but you cannot make your policy up to suit each and every little case. We have made it up to take care of all of our business, and we think this policy represents something that is reasonably fair to the dealer, to the consumer, and to the manufacturer.

Q. As I understand you, that is the present attitude of your company that this division as to the manufacturer and as to the consumer is fair to all?

A. Yes, sir; that is our attitude.

Q. In adopting this policy, is it or is it not the result of arbitrary action on your part or is it based upon your business, past business experience? Will you explain that, please?

A. It is based on our past business experience in the past 30 years. It is a gradual development into a method which is now used by our company.

Q. I intended to ask you, Mr. Coogan, whether or not the N. I. R. A., in the negotiations for the Cement Code had any bearing on the development of your marketing policies concerning the division of work?

A. Well, it did have some effect. And I think it tended to, perhaps, to a little more direct selling, especially after

Article XI was suspended from the Code.

23615 Q. Well, you say it "had some"; will you explain what you mean by that?

A. Of course under the N.R.A. Code, as I have stated before, that allowed us to talk to our competitors and to our customers, and that enabled us to crystallize our opinions and to perhaps work out a method which would fit in better to the picture inasmuch as the business was rapidly developing and changing, it was necessary for us to change, and that was a tendency toward more direct selling, which was, of course, strongly objected to by the dealers and they had influence enough to have Article XI suspended.

Q. Well, now, coming down to the present time, are you conducting your own business today under your announced policy of April, 1935?

I call your attention to Respondents' Exhibit No. 685.

23616 A. I do not know whether I have stated it, but it is a fact that at the present time we are following the policy outlined in this circular letter dated April 8, 1935.

Q. Of that matter, is it correct to say that as of the present time you say you follow it?

A. Yes, sir.

Q. Does that mean that you follow it strictly, or do you have any deviations from it?

A. Well, I should say that at the present time we are following it pretty generally without exception. There may be an exception, but I just could not put my

23617 finger on any definite case of an exception.

Q. Now, there has been considerable testimony in the record so far, Mr. Coogan, indicating that by reason of the policy of certain Respondents in selling through dealers on relief and emergency projects the Government is deprived of land grant rate benefits which it would get if it were to purchase direct. What is the policy of your company? Do you deviate at all from this policy of selling through dealers on relief and emergency projects?

Q. —through dealers on relief and emergency projects where land-grant rates to the Government may be involved?

23618 A. We do not.

23619 By Mr. Leisure:

Q. In the cases, Mr. Coogan, where the Government can take advantages of the land-grant rates if they could purchase direct, what are your reasons for refusing to give them this opportunity?

A. Well, I have already stated, in a way, that it is my opinion that generally speaking the class of work carried on by the emergency and relief agencies of the Government is work that properly belongs to dealer business. It is purely—or at least I hope it is purely a temporary set-up of Government affairs, and I see no reason why the dealer should not handle that business. It is handled very often in small lots and very often it is the kind of work that requires dealer service. There are some occasions where the emergency work does not require dealer service, but certainly we cannot make one rule for one thing and another rule for another thing when they are so closely allied as this, and I feel very strongly that this is entirely proper to handle this business through the dealer channels.

Q. In your experience in the sales of your company, what has been your experience as to whether or not this policy has deprived the Government of any substantial number of land-grant rate sales?

A. Well, so far as the company is concerned—at least, so far as I know, and I am speaking now of our own
23620 company, I could not put my finger on many cases, but I have no doubt that there are some cases, but I do not think there are many.

Q. Now, are you referring to your own company?

A. Yes. So far as my own company is concerned, I could not put my finger on very many cases. I have no doubt, as I said, that there are some cases, but I do not think there are many.

Q. And when you say that you have no doubt that there are some cases, I want to be sure that I understand you. You have no doubt that there are some cases of what, Mr. Coogan?

A. There are some cases where purchasing cement through a dealer might deprive the Government of using the land-grant rates.

23621 Q. Perhaps I misstated your testimony, Mr. Coogan. If you said 1916, it is my error. I made the mistake. If you said 1903, I would like to correct my

question to that extent, and ask you to tell us the reason that you needed the definition of a dealer.

A. It is absolutely necessary for us to have a definition of a dealer if we are going to have any classification of customers, and we feel that it is absolutely essential to have a classification of dealer customers, and, therefore, we must have some yardstick to decide whether a person is a dealer or not.

Q. Why do you feel that that is necessary, Mr. Coogan?

23625 A. Well, if we didn't have some yardstick as to who was and who was not a dealer, certainly we could have no classification of customers. We must have some yardstick, and, as I say, we have had that since 1903, and there has been practically little or no change since that time.

Q. How many dealers do you have at the present time, Mr. Coogan, roughly?

A. We have approximately 3,000 dealers on our books.

Q. Now, with reference to this yardstick that you mentioned, is that a definite concise definition, or is it flexible in any way?

A. It is entirely flexible, and we make our own interpretations in each individual case, where the question might arise.

Q. Well, if you make your own interpretations, how are you guided?

Will you explain how you vary your interpretations, if you do?

A. Well, in some cases, the size of the town will make a difference. For example, a strict interpretation of your dealer requirements, if applied to all towns, would exclude some dealers in some small towns. I have known of cases where our company, and today we still continue to do it, we sell some customers as dealers who per-
23626 haps handle only cement. I know in one case where there is a florist that handles cement in connection with his florist business, and we quote him as a dealer because in that particular town he is our distributing factor for our cement.

Q. Well, what has been your experience? Have you ever been influenced in recognizing a dealer by the fact that a competitor of yours has treated the individual as a dealer?

A. No, sir; I have no doubt—in fact, I know of some cases today where some of my competitors consider a man a dealer—I probably wouldn't consider him as a dealer if I were called upon to make a decision.

Trial Examiner Norwood: Wouldn't you find it necessary to do that in order to meet competition of this competitor?

The Witness: I am decided that it is more to my advantage not to meet that particular competition, because it might affect my business in the vicinity of that town.

By Mr. Leisure:

Q. Do you know any instances—have your competitors ever called your attention to the fact that you were considering or recognizing someone as a dealer whom they did not think was a dealer?

A. I don't remember of any specific case. I have no doubt that maybe at some time some competitor has said something to me, about certain dealers, but I can't 23627 mention any specific case.

Q. Do you know of any instances where you have stopped recognizing that person because of such a complaint?

A. Positively not.

Q. Have you ever remonstrated with any competitor as to any person whom he was recognizing as a dealer?

A. No, sir; I pay no attention to the dealer connections of the other companies. We make our own interpretations, and we feel that the other man should be entirely free to make his interpretation as to who is and who is not a dealer. I don't think I have ever mentioned to any of my competitors anything about whether any man was a dealer or not.

Q. And is that or is that not the policy of your company?

A. It is an absolute policy of our company.

Q. Have you any dealers who sell Aipha cement exclusively?

A. I think there are a few, but not very many. They are mostly all served by many different companies.

Q. Have any of your dealer customers ever remonstrated with you, and contended that you were recognizing someone as a dealer whom the other dealer customers did not think was a dealer?

A. Yes, that has happened, and it also happens that in a particular time one dealer might object to our selling another dealer in that town, even though he was a
23628 bona fide dealer. In other words, that they will—if they give us their business, they will want us to confine our sales to them; but, on the other hand, they don't always confine their purchases to us.

Q. Well, can you tell me any instance where you stopped recognizing such a person as a dealer because of this kind of complaint?

A. If I am doing business in a town, and if I feel that the discontinuance of selling to anybody, whether he might be a dealer or a near dealer, would get me more business in that town, I should certainly not hesitate to discontinue and confine my sales to the people that would give me the most business.

Q. Answer that "yes" or "no." Do you mean that you have or that you have not stopped—

A. Yes, I think that I could probably give one of two cases of such a situation.

Q. Now, I want to call your attention to Commission's Exhibits 867-7E, 867-7D, and 867-7X.

23629 Trial Examiner Norwood: Commission's exhibits?

Mr. Leisure: Commission's exhibits. (handing documents to witness.)

(Witness examines documents.)

By Mr. Leisure:

Q. Those exhibits, Mr. Coogan, represent correspondence between the Alpha Company and the Illinois Lumber & Material Dealers' Association, in October, 1934.

Will you state whether or not that represents the complete correspondence concerning that matter?

A. No, I don't think this represents the complete correspondence.

Q. Mr. Coogan, I show you Respondents' Exhibits 694-A and 694-B, and ask you whether or not that is further correspondence having to do with the same subject matter (indicating)?

A. Respondents' Exhibits 694-A and 694-B, is a
23630 part, and is referred to in Commission's Exhibits 867-7E.

(RESP. EX. 694-A and 694-B, was offered and received in evidence.)

By Mr. Leisure:

Q. Was there any further correspondence in connection with this subject matter, Mr. Coogan?

A. No, I think that the exhibits that we just had concludes the series.

Q. You refer to Respondents' Exhibits 694-A and B?

A. 694-A and 694-B, I believe concludes the series of correspondence at that time.

23631 Q. Do you have any method, or are you interested in knowing whether your dealers are members of any dealer or builders' supply association?

A. We are not.

Q. Is the membership in any dealers' organization one of the qualifications of a dealer for your company?

A. No, sir; not in any case.

Q. Has it ever been?

A. No, sir; it has not.

Q. In dealing with these associations, what has been your experience? When, to the best of your recollection, did dealers first become organized in associations of the present kind?

A. Well, to my knowledge dealers have been organized for more than 25 years. Now, of course, the organizations have grown. They were very active during the late '20's.

23632 Q. Mr. Coogan, what was your experience during the N.R.A.? Did you observe whether or not the N.R.A. had any effect on your relationships with the dealer organizations, as to whether it affected them in any way?

A. Well, our experience was that the N.R.A. had the effect of putting new life into and revising dealer associations, and they had been dwindling for quite some time, and after the N.R.A. they became quite active.

Q. Well, what about your company? Did it give any assistance to any of these dealer organizations in such rejuvenated life or organizing?

A. No, sir; it never—we do not give any assistance, in any way, to any dealer organizations. Many years ago when dealer organizations first started our company for a time took out associate memberships in some of these organizations; but we have completely dropped that, and so far as our company is concerned, we are not now members, or associate members, of any organization.

Q. We had considerable testimony from the preceding witness, Mr. Coogan, to the effect that there was considerable new use of cement from the period, say, in 1910 to 1920.

Has that also been your observation?

23633 A. Yes, there has been an increase, and a de-
23634 cided increase during the past few years in the use of cement by the Government and governmental bodies.

By Mr. Leisure:

Q. And has that, or has that not, been largely with respect to large jobs?

A. Yes, most of it was in large jobs, although there—in the total, take in all over the country—there would be a fairly large amount used in small jobs.

Q. What, if anything, has been your observation as to the tendency in either including or leaving out dealers on these large jobs?

A. Well, the tendency has been towards leaving dealers out on the larger jobs of the Government, as well as other large jobs, except in the case of the Government, the emergency relief was made an exception by us.

23635 Q. You have testified, Mr. Coogan, that it was about 90 percent through dealers, through the last 20 years.

A. No, I didn't testify to that. I testified that it was 90 percent through dealers up through about 1929, but since that time there has been a decided falling off in the amount of our business, which has been handled through our dealer connections.

23637 Q. Then, do I understand from your testimony
23638 this morning you are selling kinds of work direct which you formerly sold through dealers?

A. Yes, sir. That is, a great deal of work.

Q. Now, taking in a case of that kind where you formerly sold to a dealer, on which you are now selling direct; as far as your company is concerned, would that sale be made at the same price direct that that sale would be if it were sold through a dealer?

A. Yes, our policy since 1930 has been that if we sell direct we sell at the same price whether we sell to our dealers, if I understand your question.

Q. Then, if you sold on a job of that kind, Mr. Coogan, to a dealer who would re-sell on that same job, the dealer

would not quote as low a price as the competitive manufacturer selling direct would sell to the purchaser on that same job?

A. No. I do not see how he could unless we were willing to make a lower price to that dealer at that destination on that particular job in question.

Q. Then, if a competitor is selling direct and you are selling the same work through a dealer, would the retailer have any chance of making a sale?

A. As a general statement, he would have no chance of making such a sale.

Q. Well, then, in your experience, what has been the practical result? What is the practical effect, Mr.
23639 Coogan, in this class of work? I refer in this class of work when one company sells direct, what is the practical effect? Do all the companies then necessarily sell direct; or what has been your experience?

A. Eventually that is bound to happen, all companies will sell direct on the same class of work.

Q. Which would eventually then lead us to what? Will you explain that, Mr. Coogan? What has been your experience?

A. My experience has been that when any one important competitor or any number of competitors quote jobs direct, that we must follow to meet that competition. If we do not, we have to forego the business.

Q. I think I have already asked you whether or not your marketing policy of February and of April, 1935, were arrived at through any cooperative effort which your competitors or your dealers or dealer associations, and you said that they were not?

A. That is correct. They were not.

Q. In that connection, let me ask you whether or not you have ever been invited by dealer associations to confer with them and with other manufacturers about marketing problems?

A. Yes, sir; I have.

Q. Now, have you done so?

A. No, sir. I do not recollect that I ever attended such a meeting.

23640 The witness identified Resp. Ex. 695 as a letter, dated February 21, 1935, addressed to him from the Florida Building Material Institute; Resp. Ex. 696 as a carbon copy of a letter, dated February 26, 1935 from him

enclosing a copy of a telegram which he had sent to the Florida Building Material Institute and addressed to Alpha's Birmingham office; Resp. Ex. 697 as a copy of a telegram sent by him dated February 26, 1935 to W. F. Williams, Florida Building Material Institute, Orlando; Resp. Ex. 698 as a telegram to him from W. F. Williams, Jacksonville, Florida, dated February 21, 1935;
23641 Resp. Ex. 699 as a letter from him dated August 7, 1934 addressed to the Secretary of the Virginia Lumber and Building Supply Association; Resp. Ex. 700 as a letter to him dated August 8, 1934 from the Secretary of the Virginia Lumber and Building Supply Dealers Association; Resp. Ex. 701 as a telegram, dated August 1, 1934, from the Virginia Lumber and Building Supply Dealers Association addressed to Alpha's general sales manager at Easton, Pennsylvania; Resp. Ex. 702 as a letter, dated July 31, 1934, from the Virginia Lumber and Building Supply Dealers Association sent to Alpha at its Easton, Pennsylvania office. They all involve or pertain "to this particular matter," and he personally handled most of the matters and those not handled by him personally were handled by others under his direct supervision and direction.

23643 Trial Examiner Norwood: Objection overruled. They will be received in evidence.

(RESP. EXS. 695, 696, 697, 698, 699, 700, 701, and 702 were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, disregarding my previous question, and I will ask you now to direct your attention to Respondents' Exhibits 695 to 702, both inclusive. Tell us whether or not they represent the policy of your company?

A. These clearly indicate the policy of your com-
23644 pany so far as dealing with the organized dealers is concerned.

I want to qualify the answer which I made previously because I want to have it understood that during the time the N.R.A. Code was being prepared, during the times of the hearings of the suspension of Article XI, and some time after that, I have been often at Washington, D. C., and it is possible that during the Code period that I did discuss with dealers some matters of trade policy, but I want to be confined to that particular time. I strictly want this to be confined to that particular time.

Q. Mr. Coogan, I will ask you this: Have customers of the Alpha Portland Cement Company frequently tried to get or demanded the privilege of buying at your mills and delivering the cement to destination by truck?

A. From time to time we have had such requests from various customers.

Q. You say from time to time. Does that mean that they have been frequent or infrequent?

A. No, they have been quite infrequent. As a matter of fact, trucking did not seriously come into the cement picture before the latter part of 1929. Well, I should say in the early part of 1929, and continued probably
23645 from two to four years after that. Now, since we have discontinued trucking, why, of course, we have had practically no requests from any of our competitors to permit them to take deliveries by truck. Now, I am talking—and that statement is confined to our mills where we manufacture cement. We have warehouses at certain points where we do deliver to dealers' trucks, or in some cases make delivery by hired trucks and at one of our mills we are making—in a territory where we have found that competition existed—we are making some truck deliveries in hired trucks; making direct deliveries to trucks hired by us.

Q. I did not quite understand that last; you hire the trucks and make the delivery direct?

A. Yes. That is in a territory where we have found that competition existing, and it is a fact that we are making some direct deliveries in trucks hired by the Alpha Portland Cement Company.

Q. Has there ever been a time when you made deliveries to trucks at all of your mills?

A. No. We have never made any truck deliveries from our mills located at LaSalle, Ill. We have never made any deliveries from mills located at Alpha, Mo. Also, we have never made any truck deliveries from our mills located at Phoenixville, Ala. With the possible exception of an emergency delivery which might happen once in a while, but I have no recollection of it, from either one of those
23646 mills, we have not.

Q. What has been your experience? Was there any demand? Was there ever any demand from your customers near the mills for the so-called privilege of making their own deliveries by truck from your mills? I am now addressing your attention to the mills that you have just

mentioned at LaSalle, Ill., Alpha, Mo., and Phoenixville, Ala.?

A. Oh, from those mills, we practically never heard of trucking, as far as I know. We never put into operation any such arrangement. We never paid any attention to it, and as far as I know we had any request to do so.

Q. Was there ever a time when you did load customers' trucks at any of your other mills?

A. Yes. There was a time when we loaded trucks at our mill at Martins Creek, Janesville, Alsen, Manheim, and Ironton.

Q. Now, during all the time that you loaded customers' trucks at the mill, did any considerable portion of your company's total shipments move by truck?

A. From one mill. Even the smallest mill in our chain, there was a fairly large proportion that moved by truck, but in the total shipments there was a small percentage of business that moved by truck from the four or five mills that I mentioned that we did trucking from.

Q. Did you have any restrictions as to the amount of cement that customers could take by truck?

23647 A. No, we had no restrictions of that kind.

Q. Did you load the customers' trucks as they came, regardless of amount?

A. Yes, sir.

Q. Are you now referring to the mills that you have already mentioned, Mr. Coogan? I think you said Martins Creek, Alsen, Janesville, Ironton, Manheim; is that correct?

A. That is right.

The witness identified Resp. Ex. 703 as a tabulation prepared under his direction from Alpha records showing shipments by truck and the total mill shipments from each mill from which Alpha did any trucking from 1929 to 1932.

Now, it shows all of our mills, and some of them show no trucking shipments. As I have stated, our western mills and our Birmingham mill did not do any trucking.

23648 (RESP. EX. 703 was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, I would like to ask you before going on what the total shipments from your mills at Martins

Creek, Alsen, Janesville, and Manheim in the period from January, 1929, through December 31, 1932, were?

A. You are including Ironton in that, because
23649 that is one of mills from which we did trucking.

Q. Very well. From Ironton, also.

A. I can add it up here if you want me to, but it is approximately 2,300,000 tons.

Q. Barrels or tons?

A. Tons, not barrels.

Q. What were the total deliveries to trucks during the same period?

A. It was something less than 230,000 tons, or about 10 percent. I would like to check those figures if I can take the time.

23650 Q. Now, Mr. Coogan, on Exhibit No. 703, I notice that at your Alsen, N. Y., mill on shipments by truck they increased from 5,604 tons in 1929 to the figure of 17,145 tons in 1930.

A. Yes. There was an increase.

Q. Then, there appears to be a decrease to the figure of 3,952 tons in 1931. What have you to say, if anything, as to that?

A. It was during that year that that increased trucking tonnage appears that there was a road job located back of the mill, which was handled by truck. That only happens once in a while. And it happened in that year. And that is the reason it runs the figures up.

Q. Were there ever any trucking shipments from the Phoenixville, St. Louis, or LaSalle mill?

A. No, there has never been trucking shipments
23651 or deliveries from those mills except as I have said that there might be a little in the case of an emergency, but I doubt it.

Q. Can you explain the absence of trucking from those mills, Mr. Coogan?

A. Our customers served from those mills have never requested the privilege of taking deliveries by truck.

Q. You have told us that the Alpha Portland Cement Company does make certain deliveries by truck today. Where is that done, Mr. Coogan?

A. The Alpha Portland Cement Company maintains warehouses at Milwaukee and Green Bay, Wis., where they make deliveries to the dealers in trucks or we will deliver in hired trucks. We maintain a warehouse at

Washington, D. C., where we deliver to dealers' trucks or on dealers' orders. In Washington we have both the bulk and the packaged cement. At the other warehouses we only have packaged cement.

We also maintain a warehouse at Miami, Fla., and until a few months ago we had one at Cleveland, Ohio. And then we have one at Bellevue, Mich. We use part of that old plant there, one of the buildings, to store cement in at that point. We make deliveries by hired trucks from that mill to points in southwestern Michigan.

Q. Are those the only points where, today, you make deliveries to customers in trucks?

A. Well, I have already explained that in a cer-
23652 tain section where we found our competitors making deliveries by truck we have made it a point to meet that competitive price by making deliveries by trucks from our mill.

Q. Do you have in mind any such instances, Mr. Coogan?

A. Yes.

Q. State them.

A. In the case of the Huron Company, which has silos at Oswego, New York, we found that company delivering cement by truck. We did not meet the competition for probably two years because from the best information that we could get they were getting a little higher price for their cement delivered by truck, and we were able to pick up in that territory a little carload business. However, when we found competition quoting a price as low as we were quoting, then we started in to make our deliveries by truck and fully met the competition existing in the territory served by those silos.

Trial Examiner Norwood: That was being sold on a delivered price, was it?

The Witness: Yes, sir; it was.

Trial Examiner Norwood: Was that based on rail?

The Witness: We quoted the same price delivered by truck as we did delivered by rail.

Trial Examiner Norwood: Is the price based on rail?

The Witness: The price is based on the rail rates. Yes, sir.

23653 Trial Examiner Norwood: What mill is that?

The Witness: That is not a mill. It is a silo of the Huron Company. The Huron Company has silos at Oswego, N. Y.

By Mr. Leisure:

Q. Do trucks figure in the delivery of your cement—I think you have told us that they figure in the delivery at Jamesville; is that so?

A. Yes.

Q. Do you load customers' trucks on at that point?

A. No, we do not at Jamesville.

Q. Do you know, Mr. Coogan, if there is any agreement or understanding between your company or any of your competitors that you will or will not load or deliver by trucks at any certain point?

A. No, sir. There is no agreement that we will or will not at any place.

Q. If there were any such understanding or agreement, would it come to your attention?

A. Undoubtedly it would come to my attention. I am the manager of the sales department, and control the sales department, and any such agreement or understanding would of necessity have to come to my attention.

Q. Has there ever been any such understanding or agreement?

A. No. There has never been any such under-
23654 standing or agreement.

Q. Now, in your experience with trucking, would you make any delivery by or to trucks today at any of your mills or silos if it were not for the necessity of meeting competition?

A. No. The Alpha Portland Cement Company have always been opposed to making deliveries by trucks. We think it has no place in the manufacture. The only place where we have done it is where we were forced to do it in order to meet the competition existing at this point. You must realize that in selling to trucks or making truck deliveries it interferes very, very much with the operations of your packing house, you have no continuity of service. You have either a feast or a famine. In some cases I have seen as high as 35 trucks at a small mill lined up in the morning and after they got loaded the men at the mill had nothing to do.

Now, in loading cars you can place cars on your lead track, and you can have continuity of work until you have finished the day's work. We have found it, in many cases, the situation that truckers asked us to maintain a night gang for packing their trucks at night, so that they could do their trucking at night, and while we had considerable

trouble in the period from 1929 to 1932 at the mills where we did trucking, I will say today that, with the labor situation as it is today, it would be very much more serious if we were trying to do it today.

23655. Q. Is that the basis of the position of your company about trucking delivery?

A. Yes, sir; that is the basis. There is an increased cost of handling for trucking shipments.

23657 Q. Mr. Coogan, will you continue your answer? You started to say something there.

A. There are increased costs. I was not attempting to say how much that increased cost is and I will say for the benefit of Counsel that we do not segregate at our mills the cost of packing each shipment of cement. In other words, our costs of packing are divided by the total number of barrels packed, and that gives us our "per barrel cost of packing."

Now, we do not differentiate in our books or any other place in our records those costs. In no place in the

23658 keeping of our books do we try to keep a record of the exact cost of each class of business. When I made a statement as to the increased costs, I made it from my own knowledge and experience in the cement business for some thirty-odd years, and not from the books and records of the individual mill, or from the mills as a whole. I simply took this information from my general experience, and my knowledge of the business, and that is what I am giving here.

Q. Mr. Coogan, in order that we may be clear in regard to this matter, you understand that I am not asking you as an accountant to give the costs one way or the other as indicated by the books and records of the company, but I am asking you as an executive whether it has increased the costs to your company to deliver cement into trucks as compared with shipping it by rail?

A. Yes, sir; that is my understanding.

23660 Q. Mr. Coogan, do you think of any further reasons that you have not given us based on your own experience with your company as to the matter of trucking directly from the mills?

A. Yes, sir; there are other reasons. It has caused, in our own company, a great deal of customers' dissatisfaction. Many of our customers do not want to do trucking, and they will not do trucking. Some of our customers did and they invaded the markets of customers who did not

want to do trucking, and we had nothing but complaints, and serious complaints. I think it might add a little to the question to know that even at the mill where we did the most trucking two or three dealers wanted us to continue trucking from that mill, but they wanted us to confine our trucking deliveries to them.

Q. Mr. Coogan, there was offered in evidence by the Commission certain answers to a questionnaire sent out by economists Burns and Clark. Those answers with respect to your company appear in Commission's Exhibit No. 968-8-1. Who prepared the answers of your company to that questionnaire, Mr. Coogan?

A. I either prepared them or they were prepared under my direction.

Q. I am going to direct your attention to Commission's Exhibit No. 968-8-1, your answer to that questionnaire. You will observe with respect to trucking you say:

23661 "We could not control the deliveries, and the many trucking prices disrupted our entire marketing and price structure."

Will you explain that, please?

Mr. Paulson: There is nothing ambiguous or difficult to understand about that. That is perfectly clear and simple English language and does not need any explanation, and is only susceptible to one understanding.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Wooden: I agree that it does not call for any general explanation. Mr. Paulson, I think, is correct in that regard. Mr. Leisure has called for a general explanation. If he wants to ask some specific questions about it, that is another thing.

Mr. Leisure: I withdraw the question.

Trial Examiner Norwood: Question withdrawn.

Mr. Wooden: If he wants to ask something specifically about it, we have no objection to that, providing it is a proper question.

Mr. Leisure: I have withdrawn the question. The objection, therefore, becomes academic.

By Mr. Leisure:

Q. Mr. Coogan, will you direct your attention to the answer which you made which I just called to your

23662 attention and tell me the circumstances surrounding the making of that answer and the reasons for mak-

ing it, please. I refer to the answer in the questionnaire where you said:

"We could not control deliveries and the many trucking prices disrupted our entire marketing and price structure."

A. Well, the answer referred strictly to our own business, and our own dealer conditions, and I have already stated that when we made deliveries trucks at the mill some of our dealers availed themselves of it and some did not, and would not, and there were a great many bootleg truckers at that time looking for a return load, and we had an invasion of our own dealers' markets, and we began to lose a great many customers because if we allowed one dealer to take a truck delivery and invade another man's market with a cheap trucking rate, we could not ask that man any higher price for our cement delivered to him then even if he wanted to take a carload delivery.

Trial Examiner Norwood: These matters have been explained to us so many times in the course of the Commission's case and the cross-examination, that it seems to me that we are wasting considerable time going into the effects of trucking and why customers do not like it, and all that sort of thing. It seems to me the record is replete in that regard.

23364 By Mr. Lejsure:

Q. Mr. Coogan, I want to call your attention to the charge made against your company in the complaint to the effect that the elimination of trucking was a part of the program to maintain delivered prices. What was your experience and what has been your experience in your own company with respect to that charge?

A. Well, we have explained that our company only resorted to trucking when we found trucking in the competitive picture. Therefore, so far as we were concerned, as soon as we found any indication that that was out of the picture we were only too glad and willing to discontinue trucking. We have never been in favor of it.

Q. Well, now, when that time did come, as you have described, in what year did you stop delivering custom-

23365 ers cement to customers' trucks at your various mills?

A. Well, we stopped delivering to trucks at our Ironton, Ohio, mill some time in the latter part of 1931; at Manheim, W. Va., at our mill there, it was some little time after that;

at our eastern mills; which are the mills at Martin's Creek, Alsen and Jamesville, as I remember it, it was during or about—the early part of August, 1932.

Q. Well, now, I would like to have your experience as to what happened after that. After the Alpha Portland Cement Company discontinued selling to trucks, from what class of customers, if any, did you receive requests for truck delivery?

A. We have received very few requests for truck delivery either from dealers or consumers.

Q. Well, "very few" is of course a comparative term, Mr. Coogan, and I just want to get the facts. Take the period for say a year after you discontinued trucking; what would be your best recollection, just as you recall it, as to the number of customers who requested truck delivery?

A. My best estimate based on my memory, and having in mind the particular situation, it would not be over four or five customers.

Q. Now, there has been considerable testimony offered here on the part of the Commission to the effect that in the opinion of certain members of your industry trucking was used as an instrument of price cutting or special con-
23666 cessions; what is your experience as to that?

A. Well, that might have happened, but I know of no particular case to which I can refer.

Q. Did your company make any special price concessions to trucks?

A. No, sir; we did not.

Q. You mentioned your Jamesville mill a moment ago. When did you begin to make deliveries to trucks at your Jamesville mill?

A. There were a few truck deliveries prior to 1929, but the matter of trucking cement from that mill did not really get started until 1929.

Q. I think you in answer to the Examiner's question, if I recall correctly, have already told us that you sold your cement loaded on trucks at a delivered price; is that correct?

A. I did not understand the question.

Q. I think that you in answer to the Examiner's question have already told us that you sell your cement loaded on trucks at a delivered price; is that correct, Mr. Coogan?

A. At a price loaded on trucks at that time, that was the way we sold it.

Q. At that time?

A. Yes.
Q. That is what I mean.
A. Yes, sir; that is right.
23667 Q. How did you calculate your mill price?
A. When we first opened up that mill to trucks we took the price which our company was quoting at Syracuse, N. Y., and deducted the freight rate from our mill to Syracuse, N. Y., and used the resulting figure as the price to quote f.o.b. trucks.

By Trial Examiner Norwood:
Q. How did that work out?
A. I beg your pardon?
Q. This was for cement going beyond?
A. Going from our mill.
Q. To Syracuse?
A. Any place. We had just a flat price. We just used one price at the mill.
Q. The cement which came from Syracuse to the warehouse?
A. Oh, no, we manufactured it.
Q. Your mill was in Syracuse?
A. No, sir.
Q. What is the situation?
A. The cement was manufactured by our mill at Jamesville.
Q. Yes.
A. We took the price which we were quoted to Jamesville which we were quoted delivered at Syracuse and deducted therefrom the price from Jamesville to Syracuse, and the resultant figure was used by us as the price to bill
23668 our customers f.o.b. their trucks.
Q. That was the price you had added to the mill price to make the Syracuse price; is that correct? In other words, you took your mill price plus the freight rate to Syracuse to get the price delivered at Syracuse, and in this case you simply deducted the freight rate to get the price that you would deliver the cement to trucks at your mill?
A. Yes, sir.

By Mr. Leisure:
Q. But, as I understand you, it was just your mill price?
A. That is correct, yes.
Q. In other words, you just had one mill price?

A. That is right, just one mill price.

Mr. MacIntyre: What period are we talking about? 1930, 1929, or what?

Trial Examiner Norwood: When was this?

Mr. MacIntyre: I think that should be developed.

By Mr. Leisure:

Q. What time was it?

A. It was in 1929, the early part of 1929.

Q. How did it work out, Mr. Coogan? What was your experience with respect to your sales practice at Jamesville to trucks, selling to trucks?

A. Well, it did not work out satisfactorily to us. It did not have the effect of giving us any more busi-
23669 ness in our nearby home markets, and I should say on the whole it turned out quite unsatisfactory.

Q. Mr. Coogan, I wish to call your attention to Commission's Exhibit No. 1193-C. That appears to be a list of bases that you sent to the Federal Trade Commission in 1930. I note you show there that Janesville was a base on October 23, 1929. Let me ask you, was Janesville a base on October 23, 1929?

A. Yes, this exhibit indicates that we used Janesville as a base on October 23, 1929.

Q. Will you explain your reasons for making it a base in 1929?

A. About that time we had found some other markets or some other districts that we were quoting prices for delivery in trucks that some of our competitors had established an additional charge for truck shipments. At that time I think it was 16 cents per barrel. Now, we thought we could not add that to our price at Janesville without making that mill a base mill and therefore we made it a base mill.

Q. How did the making of that a base mill affect
23670 your truck price, if at all?

A. Well, making that a base mill, we would have, —without the 15 cents added, it would have reduced our price a little at that mill.

By Trial Examiner Norwood:

Q. It would have done what?

A. Making that a base mill without the 15 cents added would reduce our price a little bit at that mill, Judge.

By Mr. Leisure:

Q. You say 15 cents. Does that mean that you added 15 cents at that time to your base?

A. Well, I do not want to say that it was exactly at that time that we added it.

Q. Well, you mentioned 15 cents. I was just trying to find out what you mean by it. What do you mean?

A. Well, for example, in the Lehigh Valley we found that mills at that point, if there was a base figure to be used by them in arriving at their destination price, and on deliveries some of them used that base figure and added 15 cents to it.

Mr. MacIntyre: I think that the date on which this occurred, or within what period, should be developed. It does not show in the witness' testimony, and it seems to me that it is confusing.

Trial Examiner Norwood: The date of it is in the record in connection with the exhibit.

23671 Mr. MacIntyre: This is a different question and does not refer to the exhibit, as I understand it. It is a different question rather than one which refers to the exhibit.

By Mr. Leisure:

Q. Mr. Coogan, can you give us the approximate date? I am still referring, Mr. Coogan, to your suggestion that at that time you put in 15 cents additional charge at Janesville. Can you give us any approximate date as to that?

A. The approximate date is October, 1929. That is as far as my memory goes.

Q. That was not added to the price, was it, to the base price?

A. Yes, we established the base price on that date, and then we did add 15 cents to our base price.

Q. For what?

A. For delivery to trucks.

By Trial Examiner Norwood:

Q. In that case no railroad expense was added?

A. In that case no railroad expense was added.

Q. Regardless of destination?

A. Yes, sir.

By Mr. Leisure:

Q. Now, will you explain what you did and why you did it, Mr. Coogan?

23672 A. Well, as I have said, we found some other of our competitors doing that in other sections and there did not seem to us to be any reason why we should not get that extra figure from our mill at Janesville. We simply followed the use of the figure in arriving at our price for trucks.

23674 Q. Mr. Coogan, were there any factors which led to the use of the 15-cent charge for trucking delivery?

A. Well, the additional cost and the disturbance to our business routine at the mill was the most important factor in arriving at that decision.

23675 Q. Mr. Coogan, I show you Respondents' Exhibit 704, for identification, and ask you to identify it if you can.

A. Respondents' Exhibit No. 704, for identification, is a letter from the Nazareth Cement Company, dated September 6, 1929, addressed to a dealer at Bangor, sent in to us by the district manager, or, rather, sent to our district sales manager by William Fleming, the salesman covering that territory.

23677 Trial Examiner Norwood: Objection sustained.

23678 Mr. Leisure: I just want to be sure that I have made clear the purposes of my offer.

The purpose of the offer is not to prove anything that Mr. Robeson did or did not do, so it does not come in the category of hearsay. This is to show the fact that

23679 Mr. Coogan took certain action, which he has already told us about, because of what he found his competitors were doing, in this, and in other ways. Now, he has already told us that he gained knowledge that his competitors were doing certain things. I am now offering that letter in evidence which shows that his competitors were doing certain things, that he learned of it, and that he acted on it, and how he gained the information is, I think, important. So, it does not come in the category of hearsay.

Mr. Wooden: I would be perfectly willing to support that proposition to this extent; I would be perfectly willing to stipulate that Mr. Coogan put in the 15-cent charge for loading trucks because his competitors did so.

Trial Examiner Norwood: That should settle it. The ruling will stand.

23683 By Mr. Leisure:

Q. Now, Mr. Coogan, again referring to another Commission's exhibit; namely, Commission's Exhibit No. 956-15C. Will you direct your attention to that document, please?

A. Yes.

Q. I note from that exhibit it appears that you continued to use a 15-cent differential at Janesville until May 28, 1931. Does that correctly state the position of your company?

A. That is correct.

Q. When did you discontinue delivery to trucks at Janesville?

A. This states here August 3, 1932.

Q. Did you ever resume sales to customers' trucks at Janesville?

A. No, sir; we did not.

Q. I thought you told us that there were some deliveries to trucks there. At what time was that?

23684 A. There are some deliveries being made from that mill now, but they are made in trucks hired by us and not customers' trucks.

Q. Can you tell me, from looking at that exhibit, or do you know, independently of it, when the Huron Company began delivery by truck in that territory?

A. I think they started making truck deliveries in that territory about 1935.

Q. Now, you told us a while ago that you found it necessary to meet that competition. When did you first find that necessary?

A. Some time in 1937 was the first time that we felt it was essential for us to step in to meet the competition.

Q. You say 1937?

A. Yes.

Q. What happened in the two-year period prior to that?

A. Well, the system that they used, or the plan, or prices which we found them quoting, when they first opened up that was such that it enabled us to get a car of cement into that territory once in a while. There was a certain amount of dealer-warehouse business to be had, and we did get a little business. And after 1937 we found that we

were not getting any business, so we decided to step out and meet that competition.

Q. Is there any limit, Mr. Coogan, to the point where you will make delivery by truck from Janesville?

23685 A. So far as I know, our own company, of course, so far as our own company is concerned, we will make deliveries by trucks from that mill only to the points where we find our competitors making deliveries by trucks. In other words, so far as our own company is concerned, that is so. I cannot speak for any other company.

Q. Have you told us your reasons for making those deliveries and for meeting competition of that mill?

A. Well, we had to, to try to protect the tonnage out of that mill. Our tonnage was dwindling so rapidly that we had to try to recover a part of the tonnage that we were losing due to their coming into that market.

23686 Q. Now, in actual practice what has been your observation, if anything? Do you find that it costs you any more or any less to make deliveries to these destinations by your own hired trucks than it would to make deliveries by car lot?

A. To the destinations that we are making truck deliveries, where we are meeting truck competition from that mill, it costs us much more to deliver by truck than it does by rail.

Q. What are the factors that make this up, if you know?

A. The cost of the trucking. I am not taking into consideration any general increased mill costs. I am dropping that and this is the trucking end of it, itself. I have in mind the cost where we are delivering cement from that mill on a rate, trucking rate, of something like 65 cents a barrel, and the rail rate from that mill is something like 49 cents or 51 cents a barrel.

By Trial Examiner Norwood:

Q. What distance was that?

A. Well, the distance is probably 125 miles, 100 miles to 125 miles.

By Mr. Leisure:

23687 Q. You told us that the trucking you were doing from Janesville to points in and around Oswego; do you make any deliveries by truck to any points in between

and around your own mill; in other words, down and around your own mill?

A. Well, I have stated we make only deliveries or quotations by truck delivery at points where we find our competitors doing it. The Alpha Portland Cement Company does not in any way originate any trucking competition, and we do not quote trucking prices except where some of our competitors are quoting.

Q. Do you deliver the customer the cement at the same place that your competitors will, by truck?

A. Yes.

Q. I believe you told the Examiner a moment ago how far Oswego is from Janesville?

A. Oswego is about 75 miles from Janesville. He asked the distance of this other trucking point, to which I had referred.

Q. Then, how is it, Mr. Coogan, that you, as you have described, will do customers' trucking at certain points and at other points you will not load customers' trucks but will deliver by your own trucks? In other words, let me make this clear: At this point, as you have described, you load customers' truck and at other points you will not load customers' trucks, but, on the other hand, you will make delivery by your own trucks. Do I make myself clear?

A. Yes. We do not load customers' trucks at any of our mills. The place where we load customers' trucks are places where we have established warehouses in order to meet competition which has been set at that point by some other company establishing warehouses.

That method is quite prevalent in the business. There are a good many warehouses which have been established by other companies. In some case where it comes into markets that are very important, important to us, and where we have a good representation, and which are our natural markets, we are forced to step in and establish warehouses to meet that competition. It costs us a great deal more to handle that cement to the warehouse, and in and out of the warehouse, than it would if we were to ship all rail to the various destinations.

By Trial Examiner Norwood:

Q. That is, all rail from the mill?

A. Yes, sir.

By Mr. Leisure:

Q. Taking up your Martins Creek mill. What has been your experience there, Mr. Coogan, with respect to sales to trucks?

A. Well, so far as I know, so far as our own mill at Martins Creek is concerned, it is not a very important factor in the matter of truck delivery. In fact, the figures that I have produced here show there was something like two percent of our business handled over a period of four years. We simply followed the competition as we found it and tried to make ourselves competitive, and to
23689 keep our customers satisfied. We have never been active in trucking, and I doubt whether we have ever quoted a price delivered to trucks except on a specific request from one of our customers.

Q. Will you refer to Commission's Exhibit No. 956-150?

A. Yes.

Q. I think you have already indicated that is your letter to Dr. Burns of July 8, 1935, the questionnaire?

A. This is the document dated July 8, 1935.

Q. It indicates that you established a 15-cent differential at Martins Creek on November 25, 1929. Is that correct?

A. This refers to the basing-point mill 214, which I presume is Martins Creek, and indicates that at that mill we established a 15-cent differential on November 25, 1929.

Q. What were your reasons for establishing the differential at this mill?

A. We had learned from our field men, and from the reports which we had from our customers, that that policy had been put into effect by a number of companies. And we did not follow it until after a great many companies did it. And inasmuch as we were not a factor in the trucking business, and only quoted for trucking delivery when we were forced to, in order to meet competition; we simply followed along with it and started quoting 15 cents. We were glad to do anything that we possibly could to discourage trucking, and we had no hesitancy in put-
23690 ting in that rate.

Q. I show you Respondents' Exhibit 704 for

identification, and ask you whether or not that is one of the reports you have just described.

A. That is one of the reports.

23691 (RESP. EX. 704 was offered and received in evidence.)

Q. Did you tell us that you eventually discontinued trucking at the Martins Creek Mill; if so, I do not believe you gave the date on which you discontinued the service.

A. Yes. We discontinued trucking at our Martins Creek Mill some time in August of 1932.

Q. Did you at any time make deliveries from Martins Creek in hired trucks?

A. No. Our own company did not make the deliveries in hired trucks.

Q. Now, taking up your Alsen Mill; what was 23692 your experience selling it to trucks from that mill?

A. There, again, the percentage of shipments by truck was extremely small excepting in the one year when there was a road job nearby which ran up the tonnage. At the time, I am not sure whether we put in at that mill a 15-cent differential or not, it seems to me we did eventually, but I am not sure whether we put in at that mill the 15-cent differential at the same time we did the Lehigh Valley, but, as I said, we did put it in eventually. It ran through—well, it runs through my mind that it was some time later at that mill because in New York, in handling our business at that mill, we had to consider the competition which we met from the Hudson Valley or Hudson River mills. That mill is affected very directly by the competition from the Hudson River mills, and we had to give that consideration.

The witness identified Resp. Ex. 705 as a letter dated June 16, 1930 from the chief clerk in Alpha's sales department addressed to Alpha's branch manager and 23693 managers and salesmen.

(RESP. EX. 705, was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, do you recall the circumstances under which you put this 15-cent differential in on June 16, 1930?

A. Well, this indicates that the 15-cent differential charge was not put in at Alsen until 8 months after we had applied it to Martins Creek.

I have explained at that point we met the other Hudson River Mills' competition. So far as we were concerned, we made no change in our practice with regard to our trucking methods at that mill until we found what other people had done, and then we usually followed out by sending out new quotations taking advantage of the situation if we wished to do so.

Q. Did there come a time when you discontinued trucking at the Alsen mill?

A. Yes, we discontinued trucking at the Alsen mill. I am not entirely sure of the date, but I think it is
23694 about the same date that we discontinued in the Lehigh Valley.

Q. As to that I think you said about August 3, 1932, was the date at the Janesville mill; is that right?

A. That is correct.

The witness identified Resp. Ex. 706 as Lehigh circular letter, dated July 28, 1932 addressed "To Dealers", picked up by one of Alpha's field men and sent into the home office.

Q. Can you tell us whether this announcement had any bearing on the Alpha Portland Cement Company's decision to discontinue trucking from three of its mills on August 3, 1932?

A. It certainly did. As soon as we found that some of our principal competitors had discontinued trucking, in view of the stand that we had taken against it with
23695 our customers, we were very glad to discontinue it.
23696 (RESP. EX. 706, was offered and received in evidence.)

23697 Washington, D. C.,
September 21, 1939.

23698 F. M. COOGAN, having been previously sworn, resumed the stand and testified further as follows:

Direct Examination (Resumed) by Mr. Leisure.

Q. Mr. Coogan, yesterday, in discussing your experience in trucking I neglected to ask you about your Manheim mill. What has been your experience there?

A. Manheim is located in a bad location so far as trucking is concerned. It is in a sparsely settled territory. And the highways leading to and from the mill are not very good for trucking. So, we never had any definite policy at Manheim. We simply sold a little cement to trucks there for nearby points without any hard and fast policy. We made our policy flexible. We quoted a flat mill price, and the deliveries to the trucks that we made
23699 were to customers' trucks, not deliveries to trucks hired by us from that mill.

Q. When you made your trucking prices at Manheim, was it a destination price less freight, or was it a flat price?

A. It was a trial and error method. And we arrived at a flat price and used that in our quotation. Where cement was acquired by truck we used that price.

23700 The witness identified Resp. Ex. 707 as an Alpha circular letter dated June 10, 1932.

(RESP. EX. 707 was offered and received in evidence.)

23702 Mr. Coogan, did there ever come a time when you discontinued trucking in Manheim?

A. Yes, sir.

Q. Will you tell us how that came about?

23703 A. Well—

Q. Of course, I mean your reason.

A. Well, this exhibit indicates that we discontinued trucking on June 10, 1932.

We had no direct truck competition in that particular district. We did find that the mills to the east of us had discontinued trucking some time prior to that time.

After we found that out we decided that inasmuch as

trucking was costing us this money—or had thrown the cost up some, on the business at our mill, that we would discontinue trucking from that Manheim mill.

23704 The witness identified Resp. Ex. 708 as a circular letter of Lehigh, dated June 6, 1932, and Resp. Ex. 709 as a circular letter from North American dated June 8, 1932.

Examination by Trial Examiner Norwood.

These letters were received by the witness. They were sent in by Alpha's field men.

Q. Did you consider them at that time, Mr. Coogan?

A. We did. We considered them and later on we took action based on this as well as other information which we received from the field.

23705 (RESP. EXS. 708 and 709 were offered and received in evidence.)

Q. Mr. Coogan, you said later on you took action. With respect to what mill did you take action?

A. With respect to our mill located at Manheim, W. Virginia, which was the only one that we had that competed with that particular plant.

Q. Did you ever have a fifteen cent charge for truck delivery at Manheim?

A. To the best of my recollection we did not. We simply had a trial and error method, and quoted a flat price.

Q. Mr. Coogan, I want to call your attention to Commission's Exhibit No. 1193-C.

A. Yes.

Q. It shows that on March 24, 1930, you reduced your Jamesville price to trucks fifteen cents and then indicates that two days later you raised your price to its former position. What was the reason for that, Mr. Coogan? Look at the exhibit.

23706 A. Shortly before we reduced that price at our Jamesville mill there had been asked by a friendly contractor on a fairly large quantity of cement to be delivered in the vicinity of Syracuse. One of our competitors quoted a price somewhat less, I think about fifteen cents less, than we quoted. The purchasers told us about it; threw out the bids; asked for new bids. In order to meet the price of that competitor we put in that price and applied it to all business shipped out of that mill at the

time it was in, and quoted, when these bids were asked for, quoted a new price, the new price, and got the business.

After that particula job was closed, we took our prices back where they had been prior to that job.

Q. Now, I would like to call your attention to your Ironton mill for a moment.

A. Yes.

Q. What was your experience with loading trucks at Ironton?

A. Well, it was just as unsatisfactory as it was at all of our other plants. At that plant there was no trucking business. The percentage of shipments by truck out of that mill is very small, and we simply met, as near as we could, competition which we found existing in that field.

Q. Does Respondents' Exhibit 703 indicate all of your truck deliveries, as compared to your other business
23707 (handing exhibit to witness)?

A. It does.

Q. Did you ever establish the fifteen cent extra charge for delivery to trucks at Ironton?

A. Yes. As I remember it, at one time we added fifteen cents to our price at that mill for deliveries to trucks.

23714 The witness identified Resp. Ex. 711 as a letter dated December 11, 1931, written by Alpha's Chicago sales manager to its Ironton office, which was written under instructions from the witness notifying Al-
23715 pha's Ironton office to discontinue trucking. Trucking was discontinued in accordance with that on December 12.

23716 (RESP. EX. 711 was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, will you tell us when you discontinued trucking at Ironton?

A. We discontinued trucking at our Ironton plant on December 12, 1931.

Q. Now, will you tell us the reasons for discontinuing at that time?

A. By reports from our customers, and our field men, we thought that some of our competitors in that field had discontinued making deliveries to trucks, and, as soon as we found out, and confirmed that information, we discontinued making deliveries to trucks from that plant.

Q. To your knowledge, did you have any understanding, or agreement, with any of your competitors to discontinue trucking at Ironton?

A. I did not.

Q. If there had been such an agreement or understanding, would it have come to your attention?

A. It undoubtedly would.

23717 Q. First, let me ask you, Mr. Coogan, did you have trucking at your Bellevue mill?

A. Yes, we had more or less trucking from that mill from 1925 up until the time we discontinued operations, which was in 1931.

23718 Referring to Commission's Exhibit 956-18P is it correct when it states that you charged the railroad destination price less freight?

A. (Witness examines document.) Yes, we did that for some time, past. That was the way we arrived at the prices at which we billed shipments delivered to trucks at the mill.

The witness identified Resp. Ex. 712 as a copy of a letter, dated July 30, 1930, from Alpha's Chicago sales manager to the office at Battle Creek, Michigan, in accordance with his telephone instructions to the Chicago office.

23719 (RESP. EX. 712 was offered and received in evidence.)

By Mr. Leisure:

Q. Did you change your method of invoicing cement sold to trucks? I ask you to again refer to Respondents' Exhibit 712, and refresh your recollection, and tell me, if you can, whether you changed your method of invoicing cement sold to trucks?

A. Yes, this indicates that on July 30, 1930 we discontinued billing at destination prices less freight, and used a flat mill price for deliveries to trucks, and that price was 15 cents higher than the base figure which we were using at that mill for destination prices.

Q. Now, you have told us that you ceased operating your Bellevue plant in 1931; while you operated this plant in Michigan, were you in competition with the Aetna Company in the State of Michigan?

A. Yes, to some extent we were in competition with Aetna.

Q. Do you or do you not have any warehouses there?

A. We store cement in a warehouse at Bellevue, Michigan, shipping it from our LaSalle plant into that
23720 point, and delivering by truck from there to the nearby points.

Q. And for how long a period of time have you been operating in that fashion?

A. Since 1934.

Q. Well now, then, between the time that you closed your Bellevue mill, and the time you opened this warehouse, did you come into competition with the Aetna company?

A. To a very slight extent. We solicited this business for shipment in carload lots from our LaSalle mill to the Southwestern part of Michigan, and Northern Indiana, and at times, and at places, we did come in competition with Aetna, and we also meet some of their competition over in Wisconsin.

Q. What were your observations, if anything, Mr. Coogan? Did you find that the policies of the Aetna Company around this time were different, or the same as other competitors in Michigan, or as your own policies?

A. Well, we had reports from the field, our field men, which indicated that at times Aetna made rebates, or allowances, to some of their customers.

Q. In what respects?

A. In respect to prices.

Q. Did you take any steps with your competitors to correct that situation?

A. We did not.

23721 Q. Did you attend any meetings with your competitors at which Mr. Cree's activities were discussed?

A. To the best of my knowledge I haven't attended any meeting.

Q. Did you ever call Mr. Cree on the telephone?

A. I never called Mr. Cree on the telephone, and I don't think I have ever—any more than passed the time of day with Mr. Cree.

Q. There is a Commission's exhibit here, 23A and 'B,—it is entitled, "Notes of the Chicago meeting", and it appears to be a memorandum prepared by Mr. Cree of the Aetna Company. It is undated. And he refers to a Chicago meeting at which the subject of trucking cement was

on the surface the predominant feature, but this was a cloak for some problems which reflect wholly on the Aetna Company's program of progress. According to this memorandum the meeting lasted two days.

Do you recall having attended any such meeting at Chicago in 1933 and 1934 at which Mr. Cree was present?

A. No, I am positive I did not attend it and I would certainly remember it if it was a meeting which took two days.

Q. I notice the Alpha Company is mentioned here in the second paragraph of Mr. Cree's memorandum which, as I say, is not dated, but reads as follows:

23722 "Aetna's idea of trucking was based upon the theory that the main endeavor of a cement industry should be to the proper maintenance of a definite destination price. This definite destination price can be accomplished only under a plan of higher equalization of trucking and rail shipments. The higher equalization develops this definite destination price in the open, allowing any plan of delivery to be, therefore, applicable to any district, eliminating the necessity of worry among competitors as to how cement is brought to any given destination. And, so with these thoughts in mind, the Aetna Company presented a plan which was admitted by the Alpha and others to be the best plan toward this higher equalization goal that has been submitted."

To your knowledge did your company have any notice of any such plan?

A. In so far as I am concerned I never knew of such a plan. From the reading of this statement I would not understand even if I had seen it, and I do not think the statement indicates anything.

Q. Then, if the Alpha Company, as indicated here, had approved and agreed upon that plan, would it have come to your notice?

A. It certainly would have. You must under-

23723 stand that our interest in Michigan is slight. Now, it is possible that our Chicago representative might have attended that meeting. I know that I did not, that I was not there, and I know, so far as I am concerned, I never got any report about it. Our company paid very little attention to what Mr. Cree said, did, or wrote.

Q. But, I am asking you, Mr. Coogan, regardless of whether your Chicago representative attended or whether

some other person attended for your company, did your company approve such a plan as indicated here by Mr. Cree; I am asking you whether or not it would have been necessary for such approval to have come to your attention as an executive of the company?

A. Yes, sir. It would have.

Q. Did it come to your attention?

A. No, it did not.

Q. I would like to call your attention, Mr. Coogan, to another Commission exhibit, No. 1496-A. Without taking the time to read this, it is already in evidence, will you just look at it, and tell us whether or not you attended such alleged meeting?

A. No, sir, I never attended that meeting.

Q. Were you operating a mill or warehouse in Michigan in November, 1933?

A. We were not.

23724 Q. Now, did the plan which is referred to as Commission's Exhibit 1496-A ever come to your attention in any way?

A. No, it did not. This refers almost entirely to trucking deliveries. Of course, we were making no truck deliveries in the State of Michigan at that time.

Q. If such a plan as has been referred to had ever been approved or acquiesced in by your company would it have been necessary for it to have come to your attention at that time?

A. It certainly would.

Q. Did you ever come to any understanding or agreement to your knowledge with any other competitors concerning trucking prices or practices in Michigan?

A. No, sir. I did not.

Q. If such an understanding or agreement had been arrived at by your company would it have come to your attention?

A. It would.

Q. Did any such understanding ever come to your attention?

A. It did not.

Q. Now, I would like to refer to another Commission exhibit, which is Commission Exhibit No. 21-A and 21-B. This exhibit is a letter or appears to be a letter from Mr. Cree. It is dated October 5, 1933, in which he discusses

Aetna having been criticized for certain practices in the Michigan territory; with respect to the Alpha Company he says:

23725 "There was also brought up at this meeting, mention of the old job at Holland—Muskegon. This bidding was the result of the competition existing at that time as it was a known fact that the Alpha Company was taking business from us on practically the same basis that we quoted this letting. However, this is over, and the condition of Alpha and everyone else has been properly adjusted."

What does that refer to, Mr. Coogan?

A. Well, I do not know what it refers to. He indicates there that we were taking jobs at something other than the price that we were quoting generally at that time, which statement is absolutely untrue.

We have never taken a job in Michigan at any price except at the prices which we were quoting to all of our customers at that time. We were openly quoting this price. So, it looks to me as though this is a case of somebody accusing the other fellow in order to defend something that he has probably done himself.

Q. What have you to say as to that statement, "However, this is over, and the condition of Alpha and everyone else has been properly adjusted."

A. Well, if it never existed it could not be over. As I said, it never existed, therefore, the statement is incorrect. We simply followed the same policy in Mich-

23726 igan that we had always followed.

Q. Did you tell us whether or not you had a warehouse at Bellevue, Michigan?

A. Yes, sir. We established one in 1934.

Q. How long have you been making truck deliveries from that warehouse?

A. Since that time.

23727 Q. Mr. Coogan, at the beginning of the testimony you told us that you had warehouses at Miami, Washington, Cleveland, Ohio; Green Bay, and Milwaukee, Wisconsin.

A. Yes, sir.

Q. I would like to ask you if you ever had a warehouse at Chicago, Illinois?

A. No. We did not.

Q. As to these other points where you have warehouses do you make delivery from any of them to customers' trucks or in hired trucks?

A. Well, to practically all of them we make deliveries to customers' trucks.

There may be one or two, or a few places, in Wisconsin, where we make some deliveries in hired trucks but I am not quite sure of that.

23728 Q. Well, just how do you use these warehouses as far as your trucking is concerned? Do you attempt to do a whole business from them or is it a retail distribution on a small scale?

A. Well it resolves itself to practically a retail distribution because the truckloads are much smaller units than our usual unit of sale which is a carload and at those points we make deliveries to trucks, of varying sizes.

Q. And at any of these points to which I have just referred; do you know whether or not you located your warehouses there first?

A. At no point did the Alpha Company ever establish a warehouse until warehouses had been established by one or many of our competitors.

Q. What has been your experience, Mr. Coogan? Have you had occasion to observe whether or not other competitors abandoned a warehouse or was your company

23729 the first to abandon warehouses in any of these districts?

A. We abandoned our warehouse at Cleveland, Ohio and so far as I know none of our competitors has abandoned its warehouse at that point. We did, temporarily, discontinue our warehouses at Miami, Florida. But we were not able to get any business in that market and after a trial period we re-established our warehouse at that point.

Q. Well, now, you say at Cleveland, Ohio you abandoned your warehouse and your warehousing operations although some of your competitors did not. Will you please state why you abandoned this warehouse there?

A. The going in that market got even a little too hard for us to stand up under and we decided that we would rather, in that particular case, forego the business than we would to attempt to continue in that market and maintain a warehouse.

Q. Did you make any sales in Cleveland? or rather do you make any sales in Cleveland, Ohio, today?

A. Yes, we will make a few sales in Cleveland, Ohio and in vicinity. We have a few customers who will take carload deliveries. There is a certain amount of business which is warehouse business and dealers must carry a stock and we get a little business.

23730 Q. Mr. Coogan, I would like to refer your attention now to a series of Commission's Exhibits Nos. 1043-A to and including 1043-5-H relating to certain activities of American railroads and cement dealers with respect to the subject of trucking. Are you familiar with the exhibits that I am referring to?

A. Yes, sir.

Q. And to that episode?

A. Yes, sir. I think I am familiar with those.

Q. Coming down to that period, Mr. Coogan, will you explain in your own words the situation which existed with respect to trucking as it is referred to in these various exhibits and to the part that your company, if any, took in conferring with railroads.

23731 A. Well, I do not remember the year but during the time that trucking was increasing there was a great deal of talk between railroads and our own company. The railroads were losing considerable tonnage. And they were worrying about it. They were well aware of the attitude of the Alpha Company so far as trucking was concerned. I will say we needed no meetings for them to know how we felt and of course we knew how the railroads felt when they were losing that tonnage. So far as my personal knowledge goes I never had any conferences, myself, with any of the railroads but I think that our traffic manager, Mr. Apgar, did have some conferences with the railroad companies. I think he expressed the attitude of the Alpha Company so far as trucking was concerned.

Q. What was the position of your company at that time?

A. We were opposed to trucking. We only put it in where we were forced to do so to meet competition.

Q. As far as these difficulties you have described that the railroads had with the trucking situation what was the attitude of your company, if any, toward that?

A. We were very sympathetic with the railroads. We

wanted to restore the tonnage to the rails. As I remember that particular situation that series of exhibits, there is only one reference in that series to the Alpha Company. That is a statement by Mr. Duke, of the Delaware Lackawanna Railroad, where he states what the posi-
23732 tion of the Alpha Company is on the matter of trucking and, certainly, we would have no hesitancy in stating clearly to him just what we wanted to do.

Q. Have you ever had any conferences with any railroad officials concerning this matter of trucking?

A. To the best of my knowledge I, personally, have not had conferences with them. If I met a railroad official there is no question but what I would talk to him concerning the matter of trucking cement from our mills.

Q. To your knowledge as a result of any of these discussions or otherwise, did you come to any understanding, or agreement with any railroads, or their officials?
23733 A. I did not.

Q. Now, if there had been any understanding or agreement with the railroads concerning trucking, in your position as an executive would it have come to your attention if there had been any such agreement or understanding with any company?

A. There certainly could not be. Trucking was one of the sales department and traffic department problems that came directly under my charge and no move would be made by the traffic department without taking it up with me.

Q. As I understand you, no such agreement did come to your attention?

A. No, sir.

Q. It did not?
23734 A. It did not.

Q. That series of exhibits not only refers, Mr. Coogan, to railroads and manufacturers, but also refers to dealers. Did you ever attend any conferences or meetings between representatives of the railroads, dealers, or other manufacturers?

A. I did not.

Q. You mentioned trucking being part of the business which was under your supervision. What position did Mr. Apgar hold in your company?

A. He was our eastern traffic manager.

Q. Do you know whether Mr. Apgar was called as a witness in this proceeding by the Federal Trade Commission?

A. He was.

Q. Is Mr. Apgar living today?

A. No. He died two weeks ago.

Q. What authority if any did Mr. Apgar have to determine matters of Alpha Portland Cement Company policy in any conferences that he might have had with the railroads?

A. Mr. Apgar had no authority to outline any policies or to do anything else without consulting with me about it.

Q. What I want to find out is whether he ever had any authority to come to any understanding or agreement with railroads on behalf of the Alpha Portland Cement Company?

A. No, he never had any authority to come to any agreement with them. I have said before, every-
23735 body knew our position. It was no secret. We knew the railroads' position.

Q. To your knowledge, did he ever come to any such understanding?

A. No. Not to my knowledge.

Q. I would like to direct your attention to another Commission's Exhibit, No. 1043-5-E, where Mr. Cole, traffic manager of the Medusa Cement Company, in a letter to Mr. Morris of the Central Freight Association, on April 15, 1932 states that the Alpha Portland Cement Company, with plants in the Central territory at St. Louis, La Salle, Bellevue, and Ironton are shown to be against the proposal; do you know the proposal he is talking about?

A. Well, I think he refers there to rates, short haul rates. Rates to short haul points.

23736 Q. Well, let me ask you this; was that your company's position as to the reduction of short haul rates in C. F. A. territory?

A. We certainly were not opposed to the reduction of the short haul rates in that territory or in any other territory. We have always advocated it. It is my memory that we instructed or that I instructed our western traffic manager or man to change his position in that matter.

Q. Were you at that time selling to trucks at your mills at Ironton, St. Louis, or La Salle?

A. No, at that time we were not selling to trucks, any of the mills in the mid-west territory.

Q. What, if any, were the advantages to your company in having short haul rates reduced?

A. Well, the lower the rates to the short haul point the lower our destination prices would have been. And we were anxious to keep the prices as low as we could, and also we felt that a reduction in rates to short haul points would obviate any criticism of the discontinuance of trucking on the part of our customers in case there were a few of them that still might want to truck.

23742 Q. Now, again, Mr. Coogan, I would like to ask you covering this entire situation, whether or not, to your knowledge, any of Alpha's policies on trucking, its establishment or its elimination, at some points, as you indicated, or its resumption at other points, the 15 cents, or five cents differentials—have any of those policies been formulated or carried out as a result of any understanding or agreement with any of your competitors?

A. They have not.

Q. And you have already told us that if they had—if your company did enter into any such understandings or agreements, it would necessarily have to come to your knowledge?

A. Well, it was strictly a sales matter and I must of necessity have known of it.

Q. While we are getting the number of an exhibit, Mr. Coogan—some of the exhibits indicate that there

23743 was a meeting in Cleveland, attended by a number of cement companies doing business in Ohio with representatives of the dealers, and it is stated in some of the Commission's exhibits that it was agreed that trucking would be eliminated.

Did you ever attend such a meeting?

A. No, I saw that meeting referred to in one of the reports of the Commission. I checked up my own movements, and I did not attend any meeting in Cleveland on or about that time.

Q. Now, going to a new subject matter, Mr. Coogan,—to what extent, if any, are shipments made of Alpha cement by water?

A. The Alpha Company only has one plant that is located on a waterway, on a navigable waterway, and that is our plant at Alsen, New York.

Q. What amount of tonnage do you move from your Hudson mill by water, rather than by rail?

A. Well, so far as shipments from that mill are concerned, where the entire movement is by water, it is less than five per cent. Now, we do move from that mill a fairly large tonnage of cement in a combination water and rail movement.

We take the cement by boat from our mill, put it alongside the railroad docks at Long Island City, reload it into cars at that point and ship to points on Long Island.

23744 Now, that is done as a matter of service purely, and it was established by us in order to meet competition which had been set up by one of our competitors. By doing that we can load cement on a car at night, or in the evening, and it would be delivered to our customer the next morning at almost any point on Long Island.

Q. Do you use your own boats, Mr. Coogan?

A. No, we hire the boats.

Q. How do you hire them?

A. At so much per barrel.

Q. Well, does that vary with each shipment, or is it—

A. No, we usually make a contract at the beginning of the season at the present time covering a fixed rate per barrel. However, the last couple of years there have been some qualifications put in,—in the event of certain changes, the question,—the matter is to be reopened and a new rate agreed upon.

Q. How do you move the cement from your mill to the boat?

A. At our mill we load directly from our packing house into the boats.

Q. Is it shipped in packages or in bulk by water?

A. Well, practically all of it is shipped in packages. We have had one job which went to a point where there was no rail delivery, and which the customer wanted in bulk, and we got some bulk boats equipped and shipped that

23745 particular order; but ordinarily all the cement shipped by water is shipped in packages.

Q. Now, so far as you have been talking about your mill, the Alsen mill at Hudson—I mean Alsen on the Hudson River—

A. That's it.

Q. —was there any time when you shipped a good deal of cement from your Alsen mill, by boat to New York?

A. Yes. When we first took over that plant there was an existing contract with a very large New York dealer, John P. King & Company, and the Catskill Cement Company was under contract to furnish them a particular brand, Trowel, T-r-o-w-e-l,—Trowel Brand cement, and they billed it to them at a mill price under an arrangement that had been fixed upon in a contract, and while that contract lasted I think—it was expired or was cancelled in 1915, we shipped a large quantity of cement by water from that mill.

Q. How long did you continue to ship a large proportion of your cement by boat?

A. Well, shortly after the proportion of cement shipped by water materially fell off. There was an arrangement whereby the New York dealers bought this cement from some Lehigh Valley mills. They shipped the cement to Jersey City, and the deliveries were made by truck from Jersey City.

Then, in later years the question of shipping cement in barge load lots became almost an unknown factor, 23746 because our customers wouldn't purchase it in that size lots; they wanted deliveries by railroad lighterage where they could get it in carloads, or two or three carloads at a time, instead of the large boatloads which we shipped from our Hudson River mill.

Q. Now, there is testimony in the record here of shipments made by water on boats, and then kept at the dock and delivered directly from the boats to the dealers' trucks. Have you ever followed that practice?

A. Yes, for a short time we followed that practice, I think it was 1935 in Brooklyn.

Q. What were the circumstances leading up to your following that practice in Brooklyn?

A. As I remember it, that was early in 1935, I think it was May, but I am not sure—no, it was not, excuse me, can I correct that? It was June or July.

At that time some of the companies were still filing their prices and terms, and we were notified that one of the companies had established a price at docks in Brooklyn for delivery to trucks.

Immediately that we found that, we went to Brooklyn, secured the use of a dock. We also arranged with the railroads for car deliveries in their yards, and then we met that competition by making deliveries to trucks from boats

at the dock, or from cars, as the customer might
23747 want.

Q. You mentioned some other company, Mr. Coogan. What company do you have reference to?

A. I think it was the North American Cement Company.

Q. Well, then, why did you follow the North American Company's then practice?

A. Well, had we not followed the price and method of deliveries by that company, we would have been completely out of business in that market, and, furthermore, we would not only lose the business during that time, but we would lose the prestige which we had built up over a number of years with our customers, if our customers felt that we were not willing to give them the protection accorded by other companies, or the same prices that other companies might quote, we would soon be entirely out of any chance of getting any business from them.

Q. Well, did you select a warehouse in Brooklyn for this stock of cement?

A. No, all deliveries were made either from the boats or from cars.

Q. How did you sell the cement, alongside dealers' warehouses, and at their sidings?

A. Well, as a practical matter, we did not sell any because the price at which we were selling cement from our Brooklyn deliveries was so low that no dealer would
23748 buy cement delivered alongside of his dock or warehouse. There were perhaps a few shipments where tested cement might be required, and, in that case, we probably did ship some such shipments to dealers' warehouses.

The witness identified Resp. Ex. 713 as an Alpha circular letter, dated July 12, 1935, sent out from the New York office under his instructions; Resp. Ex. 714 as an Alpha circular letter, dated December 4, 1935, sent out from the New York office under his instructions.

23749 Trial Examiner Norwood: Received as marked.

(RESP. EXS. 713 and 714 were offered and received in evidence.)

By Mr. Leisure:

Q. You have told us that you still send boats down to Long Island, Mr. Coogan, and you have told us about your rates, your arrangement with the boat. What does that rate include?

A. The rate—there are two rates stated in our agreement with the boatmen.

The one rate covers the transportation of the cement to Long Island City, and the other rate covers the transfer of the cement from boats at Long Island City into cars.

Q. Do you pay any demurrage charges in connection with these shipments?

A. Yes.

Mr. Paulson: I submit that question has nothing to do with the issues in this case.

Trial Examiner Norwood: How?

Mr. Paulson: I don't see that that question has anything to do with the issues in this case.

I object to it.

Trial Examiner Norwood: I cannot see that it would.

23750 Mr. Leisure: I must point out that this is the second witness we have called in a case which has seventy-five corporations and defendants, and it may not be apparent from each question that is asked just how it fits in the picture.

I do feel that we should be allowed a little leeway for laying the basis of our case, as we start.

However, I call to Your Honor's attention paragraph G on page 20 of the complaint which reads as follows:

"(g) Under the formula, stated in Paragraph Five (c) hereof, the freight rate from the governing basing point, comprising the second factor in the delivered prices, is the all-rail freight rate, and that is true irrespective of whether customers could save money by buying f.o.b. producing point and using their own or hired trucks or barges for delivery purposes."

That, of course, puts directly in issue the feasibility of either using rail deliveries or using truck deliveries, or using barge deliveries.

Trial Examiner Norwood: Now, when he alleges something and says it is true irrespective—

Mr. Leisure: Sir? I did not hear you.

Trial Examiner Norwood: He says this is true 23751 irrespective of the barge prices, or other prices, and then now you are showing barge prices, is that right?

Mr. Leisure: Yes, sir, I am showing what they did and why they did it, or, at least, that is my objective.

Trial Examiner Norwood: Well, what are you going to show as to why they did it?

Mr. Leisure: I am going to show that they did it not as the result of combination or conspiracy. In certain instances I am going to show that they did it because it was the very best business policy from their viewpoint,—in other instances I am going to show that they did it because they had to do it if they wanted to stay in the field and meet their competitors.

Trial Examiner Norwood: How is if in issue, though, as to what the barge rates were?

Mr. Leisure: Well, if I cannot tell what the barge rates were and why they used barge rates in these instances rather than admitting, as the Government wants us to do, that it was done as the result of a conspiracy, then I am deprived of showing why we adopted the method of business we followed at the time we followed it.

Mr. Paulson: You do not deny conspiracy by saying that they picked up the quotations of their competitors and followed them: that does not deny conspiracy at all.

23752 Mr. Leisure: According to that we would not be allowed to show that we even did that,—but just have to come in here and admit the Government's charges.

Trial Examiner Norwood: I do not say that this is not relevant and material, but I say I cannot see it under the allegations of the complaint which you cited there.

Mr. Wooden: Might I ask that the question be read?

Trial Examiner Norwood: Read the question, please.

(The last question was read as follows:

"Q. Do you pay any demurrage charges in connection with these shipments?")

Trial Examiner Norwood: Going into that, I think you should make a definite statement so that I can understand what you are going to show here.

Mr. Leisure: I am simply trying to meet this allegation in the complaint here, the part that I have already read indicates the charge that has been made against us, and then the complaint goes further in the same paragraph and says: "the benefits of these cheaper means of delivery intended to inure to the public from governmental expenditures for highways and waterways; and in

fact they frequently do avail themselves of these cheaper means of delivery."

23753 Now, if I am deprived of going in and showing what the means of delivery was—

Trial Examiner Norwood: Do you mean show one instance where the means of delivery were not cheaper?

Mr. Leisure: Well, this is only the first witness, and I can only take one step at a time; but I propose to show, if I am allowed to do it, I propose to show how we used barges, how we used rails, how we used trucks, and why we used them that way.

Trial Examiner Norwood: Does the allegation cover any instances where the means were not cheaper?

You are proposing to show here that here is a means of transportation cheaper than rail. Now, the allegation says nothing about that. There is no issue there between you.

Mr. Leisure: As I read the paragraph, the gravamen of the charge is that these other methods were always cheaper and could have been passed on to the public. That is the gravamen of the charge.

Trial Examiner Norwood: I understand that. What is your paragraph?

Mr. Leisure: Paragraph (g) on page 20.

Trial Examiner Norwood: Under what general paragraph?

Mr. Leisure: Under Paragraph Eight.

23754 Mr. Wooden: I do not understand just how demurrage comes under the case.

I wouldn't have any objection if he would ascertain what the per barrel rate by water was.

Mr. MacIntyre: That is, the rates that would have to be paid by the consumer, which would be the issue under paragraph (g), page 20, of the first sentence of the complaint.

What he is seeking to do now is to show an element of cost incurred by this particular company, and not an element of price as paid by a purchaser.

This company on this particular type of transaction hires the transportation company under a contract, and agrees to pay the demurrage itself. The customer, in that instance, does not pay the demurrage, but the company pays it.

It does not meet the issue of that particular paragraph

of the complaint at all. So what he is asking now is asking this company what it pays in the way of demurrage. It is not in issue.

Trial Examiner Norwood: I do not think so.

Mr. Leisure: Mr. MacIntyre seems to feel that we ought to pay the demurrage and say nothing about it, and sell the cement at the same rate. The fact is, that it is taken into consideration in the price.

23755 Mr. MacIntyre: If Mr. Leisure had an instance—

Trial Examiner Norwood: As one of the effects of the foregoing acts affecting prices—

Mr. Paulson: If Mr. Leisure will state an instance—

Trial Examiner Norwood: As one of the effects, as stated here; that if these things were true, and if these methods were carried out, it would prevent consumer advantage to f.o.b. mill purchasers.

Now, you are offering a case here where there was some boat transportation that was not cheaper than rail transportation.

That is clearly irrelevant and has nothing to do with this case, and does not prove or disprove anything.

Mr. Porter: Your Honor, basically, the charge in this case is a conspiracy to limit competition.

To meet that charge, we have an unquestioned right to show fully the competitive picture,—what we do in a delivery in Long Island enters squarely into that competitive picture,—if we, in order to compete, pay more than we would have to pay if we shipped by rail, that is a part of a competitive picture.

The exclusion of that evidence is a denial of a fair trial to which these Respondents are entitled.

Mr. MacIntyre: If Your Honor please—

Trial Examiner Norwood: Wait a moment. I
23756 want to get that squarely now.

Now, how does the amount that they pay for this boat transportation fit into that picture? I want to get Mr. Porter's point.

Mr. Porter: Simply for this reason, Your Honor. I know of no single thing that can be taken out of a general picture and say that is the picture; you have got to get the whole thing. We are trying in this case, from this witness, to prove the whole competitive picture for forty years. I do not think it is possible to pick out any one thing and

say that that is the controlling factor. You cannot take it out and say "This is relevant" and "This is not relevant."

Trial Examiner Norwood: Then there is no circumstance, however trivial, that should be excluded; is that right?

Mr. Porter: That is right, Your Honor. I do not care how trivial it is; we have a right, a fundamental and constitutional right, and the Supreme Court will so hold, to put in any factor, no matter how trivial it may seem, that we feel we have a right to put in and want to put in.

Mr. MacIntyre: Your Honor please—

Trial Examiner Norwood: I think you will have to show me some reason for admitting this.

23757 Mr. Porter: Unless there is a new rule that has never been introduced or upheld in any case.

Trial Examiner Norwood: Show me any reason why the price here is not material; I shall be glad to admit it.

Mr. Leisure: Your Honor, I have pointed out that this is not trivial; it is basic. Here is a company that is on a waterway. Now, the complaint, without pointing out any specific paragraph, charges that we shipped by rail to eliminate trucking, and eliminate water shipment, by conspiracy, and shipped only by rail.

Trial Examiner Norwood: Yes.

Mr. Leisure: Now, I am attempting to show that here is one definitely situated on a waterway.

Trial Examiner Norwood: Yes.

Mr. Leisure: And I am going to, if I may be allowed to proceed further, to introduce such evidence that will convince anyone of an unbiased mind that we have not discontinued either trucking or shipping by waterway as a result of conspiracy; but because of sound business reasons.

Now, I cannot prove that unless I am allowed to show what it costs us to ship by waterway as compared to what it costs us to ship by rail.

That is the whole story.

23758 Mr. MacIntyre: If Your Honor please—

Trial Examiner Norwood: Whether or not you ship by water or rail has nothing to do with this particular charge here—

Mr. Wooden: There is no such charge that—

Trial Examiner Norwood: —and the reasons arising thereunder.

Mr. Wooden: There is no such charge. We do not say in the complaint that they refused to ship—

Trial Examiner Norwood: (Interposing) By water.

Mr. Wooden: —by water.

Mr. MacIntyre: Your Honor please—

Mr. Leisure: I did not say that. What I said was—and if I am wrong you correct me—the charge is as the result of conspiracy we shipped by rail—

Mr. Wooden: (Interposing) No.

Mr. Leisure: —and did not ship by waterway and by truck.

Mr. Wooden: No.

Trial Examiner Norwood: No. I am going to sustain the objection and strike the answer.

Mr. MacIntyre: Your Honor please—

Trial Examiner Norwood: Well, I have already ruled. There is no point in—

Mr. MacIntyre: Let me—

23759 Trial Examiner Norwood: No reason for anything further.

Go ahead.

By Mr. Leisure:

Q. Now, taking up the cost per barrel on your shipments down to Long Island, as you have been describing, Mr. Coogan. What would it amount to per barrel, the cost of transportation from your mill to Long Island City?

A. The transportation cost is something like—about 25 cents per barrel.

Q. And is that the total cost of shipping in that way, per barrel?

A. No, there is a charge for transferring from the boats at Long Island City to the cars, and then there is a further charge, of the freight charge.

23760 Q. Then, what would be the total cost per barrel, if you know?

A. Well the total cost per barrel depends upon the destination to which the cement finally goes, as the freight rates, the rail freight rates from Long Island City to various points on Long Island are different.

23764 Trial Examiner Norwood: Now, I do not find the slightest relevancy in any testimony offered to prove that there are certain cases in which effect did not follow in the absence of conditions laid down by the defendants for them to follow. To make that clear, the complaint alleges that such and such actions permit of the securing of the difference between the actual transportation and the rail transportation by the manufacturers. Now, do you propose to show some instances in which the manufacturers did not take that, or some instances in which other transportation was not as cheap as rail transportation.

That does not disprove anything.

23765 Trial Examiner Norwood: None of that method of doing business is relevant in this case, except your pricing methods, it seems to me.

Mr. Porter: Your Honor, we moved to strike out a lot of the other evidence along that line. We have had about 20,000 pages of that type of proof which we endeavored, unsuccessfully, to get rid of. We had around 20,000 pages devoted to the proposition of prices.

Trial Examiner Norwood: Prices and their method of being fixed of course is a matter of importance in this case. We have had about three weeks in which you have been putting in the "picture". I think the picture ought to be pretty complete, except as to relevant particulars. In these instances cited here none of your references in the complaint refer to the Long Island situation. If you want to controvert any of those where there was
23766 evidence put in to substantiate them, why, you may do so.

23801 The witness identified Resp. Ex. 715 as a paper prepared under his direction and supervision on November 1, 1938, showing the cost of handling cement at various Long Island points by all rail and by water and rail through Long Island City. It represented Alpha's rates on November 1, 1938 and the figures are correct to his best knowledge and belief.

23802 Mr. Leisure: I offer it in evidence.

Mr. Wooden: Your Honor, this is objected to on the same ground that previous objections were offered to similar testimony by the witness; and your Honor sustained the objection. In other words, that it is irrelevant and immaterial to show one instance, as proof that a series of instances was conducted or had or existed in the same way.

23804 Trial Examiner Norwood: And you are seeking to show by some instances here where it is more advantageous to ship by freight than water?

Mr. Leisure: Well, that may be part of it, that 23805 may be part of the proof, that may be in it; but that is not the sole purpose for offering it at all.

Mr. Leisure: Well, I have just explained that. The reason for doing it is to meet this charge that we do not ship by rail as the result of conspiracy, we do not ship by rail because it is the easiest way to figure freight charges. There are good sound business reasons for conducting our business as we do conduct it. That is what I want to offer it for.

Mr. MacIntyre: Your Honor please, on the statement just made by Mr. Leisure a few moments ago, that is that what he is attempting to do through the offering of this evidence is to show that they use all rail freight rates in figuring delivery prices because it is easier for all of them to do so,—that does not meet the issue, because the witness has already testified that irrespective of the fact that these methods were used by his company, through conveyances hired by his company, that that did not affect the delivered price, because of the way that was figured.

So that it does not meet the issue.

23806 Trial Examiner Norwood: I do not see that this meets the objective that Counsel stated here, and I cannot see that it is relevant in the slightest particular.

So I shall sustain the objection.

Mr. Porter: Your Honor, do you take the position that any evidence of competitive activity is immaterial in this case?

I think we are entitled to have a square ruling on that, whether your Honor takes the position that you can properly exclude any evidence that Respondents offer that touches on competitive activity in this case. I think we are entitled to a direct answer on that question.

Do you feel that you can properly and lawfully, and under the requirement of giving us a fair trial, exclude any evidence that we offer as to competitive activity, on the ground that it is immaterial?

Trial Examiner Norwood: I do not so feel, and I do not think you have offered any in this case right here.

Mr. Porter: We say that evidence is part of our evidence on competitive activity.

23807 Trial Examiner Norwood: If does not appear to me.

Go ahead.

Mr. Porter: I know that your Honor has enjoyed reading the recent Supreme Court decision in the Morgan case and I call your attention to that in connection with this ruling.

Trial Examiner Norwood: Thank you.

Mr. Leisure: In view of your Honor's ruling as to this line of testimony, I desire to make an offer of proof at this time, and I offer to prove by this witness, if allowed to do so, that the all rail rate from the Alpha Company at Alsen to Jamaica is 57 cents; that the total water rate, which includes water and rail together, is 59 cents.

I also offer to prove that the total all rail rate from the same point to Windfield is 57 cents; whereas the total water rate including the rail rate necessary to use the water is 59 cents.

I also offer to prove that from the same point of the Alpha Company to East New York the all rail rate is 57 cents; whereas the water rate from the same point is 55 cents.

To Hammel the all rail rate is 65 cents, the water rate is 64 cents.

23808 Mr. Leisure: I offer to prove that the all rail rate to Hollis is 57 cents; whereas the water rate is 64 cents; that the rail rate to Hempstead is 65 cents; whereas the water rate is 67 cents; that the all rail rate to Queen's Village from the same point is 57 cents; whereas the water rate is 64 cents; to Woodmere is 65 cents by rail, and 64 cents by water; to Port Jefferson the rate by rail is 68 cents; by water it is 75 cents; to Manhasset by rail

23809 it is 65 cents, by water 64 cents. To Jamesport it is by rail 80 cents, and by water it is 80 cents. To Forest Hills the rate by rail is 57 cents; by water 59 cents. To Huntington by rail it is 68 cents, by water 72 cents. To Sayville by rail it is 68 cents, by water it is 75 cents To Floral Park by rail it is 68 cents, by water 72 cents.

Trial Examiner Norwood: Now, I think that is enough to cover an offer of proof.

You can also state that you have a certain number of other points where there are similar inequalities.

Mr. Leisure: Yes. That is what I am going to say, there are numerous other points, and I offer to prove that

as the result of this compilation we want to show on the motion that it costs this company more to ship by water than it does by rail.

23810 Trial Examiner Notwood: Yes. Same rulings.

By Mr. Leisure:

Q. What is your practice, Mr. Coogan, in shipments to New Haven, for a large quantity, take any sizeable orders like 3,000 barrels?

Do you ship it by water,—or how do you ship it?

A. Orders don't come in that size. Our customers buy carloads at a time.

Q. Yes, then how do you ship to New Haven? That is the point of my question.

A. We ship that by rail. We haven't made any

23811 shipments to New Haven, or any other New England port, by water, for many years; nor have we had any requests from our customers to do so.

Q. Now, Mr. Coogan, in shipping, as you do from your plant by barge, as you described this morning, and by rail, are there any instances where you would net more by shipping by barge than by rail?

A. Well, that would depend entirely upon the amount of cement involved in this shipment, and the point to which it was to be shipped.

23812 Q. Let me give you a specific case.

In a shipment to New Haven, where you had a carload lot, or a sizeable order,—would you ship it by water at the request of the customer?

A. How?

Q. Would you ship it by water at the request of the customer?

A. Yes, if a customer requested water delivery we would give it to him.

Q. What would be your price in that instance? What would you charge him?

A. I would quote him the same price as I quote my rail customers in that town.

Q. You say you quote the price that you give your rail customers. Why do you do it that way, Mr. Coogan?

A. It is the only way that we can do it. At New Haven we have several different customers, some of them are on water, and might possibly take water delivery; others are located on rail and want rail delivery. They are all com-

peting, and, certainly, we cannot give one man one price in New Haven and one man another price. They are all competing, and also the man who takes the water
23813 delivery also has the rails into his yard in addition to the water warehouse.

Q. Are there any of your customers along the Hudson River who have warehouses right on the River, who could take delivery by boat?

A. I don't know of any at the present time. At one time there were a few of our customers that did take such delivery. There was a small boat running up and down the river, which took cement and delivered it at the various destinations, charging us the rail rate.

Q. Do you make any shipments by water to the Connecticut shore points?

A. No, we haven't made a shipment by water for years, nor have we had any requests to make shipments by water.

Q. As far as your company is concerned, then, is the water transportation confined to the Long Island City points from the Alsen mill?

A. Well, there might possibly be an occasional boat load of cement to one of our customers on the waterfront in New York, but not very often.

Q. Now, what has been their practice,—have you found that this use of water transportation, where you do use it, has warranted your company in making lower prices to the points where you have been able to use water transportation in whole or in part?

23814 A. It is impossible for us to quote our different customers in the same town different prices, and if we did quote the water customer a lower price that would immediately become the price that some of our competitors, at least, would quote in that town.

You take a mill that did not have water delivery, and we went into a town and quoted a lower price by water delivery, why, of course, they would immediately meet it with rail, and then we would have the same thing all over again.

Q. Take the rest of your mills, without taking them one by one, Mr. Coogan,—are any of the others located in a position so that you can make shipments by water from the mill?

A. We have made shipments by water from Ironton by taking cement from the mill to the waterfront and loading

it on barges for points on the Ohio River; but, taken as a whole, and I think in every instance, the transportation cost involved in that movement was greater than the rail transportation.

From St. Louis we have made one or two shipments out to St. Louis, and transferred it to a boat for points on the Mississippi River. There, again, the combination cost was greater than the all rail cost. We made one shipment from our La Salle mill to Peru, and loaded it on
23815 boats. There, again, the combination cost was greater than the rail cost.

Q. On those shipments, are they made on your own barges?

A. No, we don't own any barges there. We hire barges when we make such shipments.

Q. How is the freight paid when you make these shipments on the barges?

A. On water shipments the freight is almost universally paid by the shipper.

Q. And in those cases, how do you quote your prices?

A. We quote our prices f.o.b. the destination to which the cement is consigned.

23816 Q. Taking up another subject, Mr. Coogan: Does the Alpha Company come into competition with imported cement?

A. Yes, we meet competition of foreign cement at many points on the Atlantic Seaboard, and some Gulf ports.

Q. What would be a percentage of your total annual shipments that you make into that territory?

23817 A. I should say, roughly, from 20 to 25 per cent.

Q. What has been your observation, if anything, as to the difference in price between imported cement and domestic cement?

A. There has been a decided difference in the price of imported cement compared to our cement. I have had many cases where the figure is from 35 to 50 cents a barrel less than the price which we have quoted.

Q. That is, the price of imported cement was from 25 or 35 cents less?

A. Thirty-five to 50 cents less than domestic.

Q. Does your company attempt to, or keep track of, the prices being quoted on imported cement in the markets where you do business?

A. Yes, we do, we try to keep posted on that as well as

on domestic cement. We don't get quite as much information regarding foreign cements as we do the domestic cements because they don't broadcast quotations, or
23818 don't publish their price, quite as frequently as the domestic manufacturers do.

Q. You say you don't get quite as much. What do you do in that respect, Mr. Coogan?

A. Well, we can easily find out by making specific inquiries, we can find out the price of foreign cement in a given market at a given time, if we care to look into it, and we do pick up quotations and offers to sell made by our foreign competitors.

Q. Of course, you are not a lawyer, Mr. Coogan. When you say you can do that,—I am interested in knowing whether or not that is what you do do.

Do you find out what the prices—

A. Yes.

Q. —of imported cement are?

A. Yes. We must find out what the prices are that our foreign competitors are quoting, and we do.

Q. Now, you say that you must keep informed as to the prices.

Let me ask you whether or not you keep informed as to the practices being observed in connection with the sale of imported cement?

A. Well, I don't know much about their methods of sales, outside of their prices, but that is the thing that we want more particularly than anything else. I
23819 don't think they have any particular sales' policies; they never have, so far as I have been able to find out.

The witness identified Resp. Ex. 716 as an extract from a salesman's report of July 3, 1935; Resp. Ex. 717 as a copy of a letter, dated July 16, 1935 from a firm of architects in Paterson, N. J.; Resp. Ex. 718 as a letter dated August 3, 1935 from an importer at Forest Hills, N. Y.; Resp. Ex. 719A-B as a report from Robert W. Hunt Company, dated July 17, 1935, giving tests on certain foreign cements. These documents were sent in by Alpha salesmen covering the territories where they
23820 were picked up, and that Alpha considered them in connection with other information in relation to its decisions with respect to competition with foreign cement.

23825 Washington, D. C.,
September 22, 1939.

23827 F. M. COOGAN was thereupon recalled as a witness for the Respondents, and, having been previously sworn, testified further as follows:

Direct Examination by Mr. Leisure (Continued).

Q. I call your attention to Respondents' Exhibit
23828 No. 717, for identification. I notice that in the lower left-hand corner there is certain longhand writing. Do you know whose writing it is, and, if you do, will you tell us under what circumstances it was made.

A. Yes. The writing in there was made by our district sales manager covering New Jersey, E. P. Williams. The figures there show the difference in the price quoted on foreign cement as compared with the price that we were quoting on our cement.

Q. What were the circumstances under which these figures were being made by your representative?

A. Well, to keep us posted as to the prices and conditions under which foreign cement was being sold in the markets which we were attempting to serve.

Q. Now, with respect to these other exhibits, Respondents' Nos. 716 to 719-A, B, did you or did you not make any similar consideration of the information contained therein? If you did, I wish you would explain to the Examiner the purpose of making that type of consideration.

A. Well, on Respondents' Exhibit No. 718, it is quoted on a per sack basis. Those figures. This indicates that we reduced the price that we were quoting to a per sack basis so that we would have some comparison.

23829 (RESP. EXS. 716, 717, 718, 719-A, and 719-B were offered and received in evidence.)

Q. Now, after doing this figuring, as you have
23830 described, on these foreign cement prices what, if anything, did you do with respect to meeting the same?

A. We, of course, do not act, in our office, on every quotation or every piece of information that is sent in to us.

We take it as a whole and then it becomes cumulative. We get a great deal of our information by phone, in fact, most of it comes to us by telephone from our salesmen. As I remember it, it was another company action at that time taken by another company which instituted a very drastic reduction in the prices of domestic cement in the territory covered by the particular quotations that were given you.

As soon as we learned of this reduction in price, why, of course, we had no choice except to meet the quotation or to forego the business and we decided, after talking it over in our office, that we would meet the competition.

23833 Q. Well now, when these depressed prices which you have just described were in existence, was your net at the mill on certain shipments into this area more or less than your normal net would have been?

A. It was materially less.

23834 Q. Well, then, Mr. Coogan, how is it that you did not abandon those markets, or suspend operations in them, until the prices increased?

A. Well, any company that expects to stay in business cannot abandon any markets if they are doing business, and where they feel that—we expected to continue doing business—if you once go out of a market it is just like beginning all over again, to get back into that market. you never will regain the dealers that you formerly had in that market, because they will feel that you are not giving them the protection which has been given to the dealers of other domestic companies, and it is almost impossible to get back into markets where you go out on account of low prices.

Now, we have had some experience where we did withdraw from markets for that reason, and it was—it has been a very difficult job to get back into such markets.

23835 Q. What has been your experience, Mr. Coogan, in a situation of that kind where, as you have said, you have abandoned a market? Do you or do you not have other new markets available?

A. Well, if we knew of any new markets available at the present time we would certainly get after them,

23836 because, of course, we are only operating at approximately 40 per cent, and I don't know of any available markets that are not fully covered.

Q. Would you say there is a substantial difference be-

tween the quality of imported cement and domestic cement, Mr. Coogan?

A. No, there is substantially no difference.

23837 Q. You have told us, Mr. Coogan, that your company has sold sement at higher prices than the prices charged in this same territory for foreign cement. How do you explain your ability to charge this higher price—

A. Well, in many—

Q. —in the same market?

A. In many cases, we can get a little more money for our cement than the imported cement is selling for, but we can not sell our cement if that difference is very great.

If the difference is reduced to a small amount, why, there is a great many people will prefer, and will use, domestic cement.

Now, some of it is used on government work, and at one time, I don't know whether it is still in, there was a differential in price established for domestic cement, a differential in favor of domestic cement.

Q. You say a differential was established? What are you describing now, a company selling domestic cement, or a company selling imported cement?

A. No, at one time the governmental authorities issued some order where—which prescribed the use of domestic materials, if the difference in price was not more than 15 per cent.

I think later on it was increased to 25 per cent.

23838 Q. You say that you are able to sell your cement in the same market if the difference is not very great. "Very" of course, is a comparative term. I would like to know just what you mean by that.

A. Well, I would hesitate to make a statement as to to what difference in price we can sell cement, because it varies as to different customers. You will find some people will make their decision based on three or four cents a barrel; others might say five or six, and there is a decided difference in the temperament of your customers as to what they will or will not pay, in favor of domestic cement.

Q. Well, are there any other reasons as to why a customer will pay more for your cement in a given market instead of buying the imported product?

A. Yes, we have a delivery advantage. His supply of domestic cement is available to him, and can be had at

short notice, whereas, in the case of foreign cements, he is sometimes held up on getting deliveries.

Q. Now, there has been testimony in the record to the effect that it takes approximately three days, normally, to get a shipment from the Lehigh Valley up into the Northern New Jersey and into New York.

When you have an order for cement which passes on to your mill in the Valley, would that be shipped the same afternoon, or what would be the period of time involved?

23839 A. All orders are shipped the day that they are received, provided they are received by about 4:30 in the afternoon. Sometimes we ship them as late as five o'clock.

Now, as far as taking three or four days to get a shipment from our mill in the Lehigh Valley to northern New Jersey, that might have been true many, many years ago, but today a shipment from our mill tonight would be delivered at, say, Newark, tomorrow morning without any doubt whatever. The railroads have improved the service, and they make overnight deliveries to a very large portion of the field which we serve.

23840 Q. Well, now, you have told us, Mr. Coogan, that in the seaboard markets affected by this imported cement, at times you have quoted these special depressed prices.

I would like to ask you if that has been true in Boston? Has the Alpha Company ever initiated such depressed prices in that territory?

A. No, we never initiated depressed prices in the Boston territory. We did follow depressed prices which had been initiated by a competitor.

Q. Did you initiate them in New York?

A. We did not. We did not initiate the prices in New York. There, again, we followed prices which we found in the field from a competitor.

Q. Do you have any knowledge, Mr. Coogan, of the existence of lists of destination prices at various places within the New York and Boston area during the period when you were quoting these depressed prices?

A. Yes, sir, I do.

Q. Has your company ever received any such lists of prices from the Lehigh Company?

A. We have never received them—we have never re-

ceived them without having requested them from the Lehigh Company, and on only one occasion did we receive them from them under those circumstances.

23841 The witness identified Resp. Ex. 720-A and B as a price list of North American marked effective December 28, 1936.

Trial Examiner Norwood: That is the price of foreign cement?

The Witness: No, this is the price of their cement.

By Mr. Leisure:

Q. Do you know on what date, Mr. Coogan, that you learned of these new prices being quoted by the North American Company?

23842 A. We learned of it on December 28.

Q. What did you do, if anything, then?

A. After getting several reports from the field affected, which is in the Baltimore territory, and vicinity, we found that those prices varied and were much lower than the prices which we had formerly been quoting at those points. We got in touch with the North American Company and asked them if they would send us a list of the prices that they had quoted in that particular field, and they said they would, and our receipt stamp on that exhibit shows that it was received in our office on December 29.

(RESP. EX. 720-A and 720-B was offered and received in evidence.)

By Mr. Leisure:

Q. What has been your experience, Mr. Coogan, as to your regular course of business? Would you have received that as you have described from your salesmen, if you had wanted? What has been your normal course of business?

A. Yes, we could have started our salesmen out
23843 to the towns on this list, at which we were quoting, and we could have found out easily what prices the North American Company was quoting; but we decided that this was a most advantageous way, and we simply asked them, "Now, don't"— You must remember that the quotations were sent out by the North American Company on December 27, and were effective on December 28.

Trial Examiner Norwood: When did you change your price?

The Witness: We changed it on either the 29th or 30th, but, of course, as in all other reductions in price we must make it retroactive from the date that the other fellow put in his low price, in order to protect our customers.

By Mr. Leisure:

Q. Now, in answer to the Judge's question, did you quote the same price,—you say—he asked you when you changed your price, did you quote the same price when—I assume you made a change—if you did, what was it? That is what I want to know.

A. Yes, we quoted the same prices that are shown on there at the points on that list where we do quote.

Q. To you knowledge, Mr. Coogan, was there any agree-
23844 ment between your company and the North Amer-
ican Company, or the Lehigh Company, or any other company, to quote these same prices?

A. No, sir, there was no agreement on our part of any kind.

Q. And from what you have told us, I take it, if there had been such an agreement by your company it would have come to your attention?

A. It would have to.

23845 The witness identified Resp. Ex. 721 as a Lehigh, quotation, dated December 8, 1936, addressed to a dealer at Worcester, Mass.; Resp. Ex. 722 as a report dated December 8, 1936 from an Alpha salesman covering the State of Maine.

Q. How did these documents come into your possession, Mr. Coogan?

A. They were sent in by our salesmen, having been picked up in the field by them—one of them, of course, is a direct report from a salesman, and the other was picked up in the field.

Q. And did you or did you not learn of the prices from those papers?

A. Yes, this was the first information that we had of it in addition to a very large number of telephone calls, which came to us immediately that these new prices became in effect.

23846 Trial Examiner Norwood: Yes, they are received under that usual limitation.

Received as marked.

(RESP. EXS. 721 and 722 were offered and received in evidence.)

Q. Mr. Coogan, the salesman's name here,—will you tell us what it is on Respondents' Exhibit 722?

A. The salesman's name is Frank S. Morrison.

Can I call attention to the quotation from the Lehigh Company dated December 8? You will notice that these prices were picked up in the field by our own salesman on December 8, which indicates, of course, that the quotations were mailed by them earlier than the date of these quotations.

Q. Are you referring to Respondents' Exhibit
23847 722, Mr. Coogan?

Trial Examiner Norwood: Yes.

A. Yes, 722.

By Mr. Leisure:

Q. Now, you told us that your company had not initiated prices, these depressed prices in New York, or Boston.

Has your company ever initiated any depressed prices in seaboard markets?

A. Yes, shortly after this we found foreign competition was bothering us materially from our Birmingham mill and particularly at Mobile, Pensacola, and Panama City, so that the Alpha Company put in at those places a base figure which they used, plus the freight rates from those ports, to interior points, and quoted those prices.

Q. When was that, Mr. Coogan,—when did you establish these bases?

A. It was, I think, December 27, or 28; it was the latter part of December in 1936.

Q. Well, now, again, did you discuss with any of your competitors your intention of establishing these base prices at Pensacola and Mobile and Panama City, before you put them into effect?

23848 A. I did not.

Q. After you put it in, did any of your competitors ask you why you put it in, or discuss it with you?

A. No. I do not remember that any of them did. Now, of course, you must remember that the base figure that we put in at that mill, plus the freight rates from the Ports would not cover a very large territory.

Q. Now, the record shows, Mr. Coogan, your action was at about the same time the Lehigh Company announced the so-called arbitrary prices in New York and in Boston Metropolitan area.

Did your company have any understanding or agreement with the Lehigh Company that you would put in these bases from your mills?

A. That is not correct. We did not put them in at the same time that the Lehigh put in their depressed prices in either the Boston or New York markets. They put their prices in, early in December. And, as I have stated before, the Alpha Company did not put the prices in until the latter part of December 1936. Now, it does happen to be the same date or about the same date that the North American Company put in some depressed prices in the vicinity of Baltimore where they were meeting foreign competition. Now, there can certainly be no agreement, or any connection between the action of the Alpha Company on the Gulf Ports, and the North American
23849 company at Baltimore, Maryland. Because, at the particular ports where we put in our prices, we did not compete in any way with the North American Cement Company.

Q. Regardless of that, did your company have any agreement or understanding with the Lehigh Cement Company that you would not—

A. No, sir, we did not.

Q. —you are referring to the subject matter we are discussing?

A. Yes, sir. No, sir. We did not.

23850 Q. Now, were there any other price moves by your company which accompanied this establishment of lower prices mentioned, from Pensacola, and Mobile, and Panama City that you told us about?

A. No. Not to the best of my recollection.

Q. I neglected to ask you whether there were any bases at those points prior to that time?

A. No. There was, years ago, but recently there had not been.

Q. Were there any special prices at those points in there at that time?

A. No. When we put in the bases at those particular ports, we applied the minimum line haul rate for deliveries.

within the switching limits of the cities and that
23851 made a considerable reduction in the price at the particular ports, as well as inland shipments where the rates were favorable to those particular ports.

Q. Do you know, Mr. Coogan, whether there were commodity rates on cement from those ports, moving inland?

A. Yes, sir. There were commodity rates from those ports.

Q. Now, you told us, several questions back, that you established rate bases at those points. Will you tell us what you did?

A. We simply sent out new quotations showing our destination prices. That automatically established the the base there, because we used the base figure in arriving at those prices.

Q. You say you "sent out new quotations." Did they have any statement on them to the effect that they were establishing a base or that they were base prices?

A. Oh, no. We never show that on a quotation.

Q. Did you send any notice of any kind to the Cement Institute that you were putting in a base at that point?

A. No, sir. I did not.

Q. Did you send any notice to any of your competitors to that effect?

A. No, sir. I did not.

Q. And when I say, "sent any notice" I mean, did you make any statement to them in any way that you were doing this?

A. I do not recall making any statement. I want
23852 to be frank and say that had anybody asked me, after we had put in those prices, if they had, either by telephone or letter, asked me what we had done, I would not have hesitated to have told them.

Q. Well, I have reference to before you did it, when you were sending out notices.

A. No, sir.

Q. Did you tell anyone what you were going to do?

A. No, sir. We did not.

Q. Have you told us how long you continued those bases?

A. I think that we discontinued using them about 1938, the latter part of 1938.

Q. For what reason?

A. Well, the matter of imported cement did not seem to be as important in those ports as it had been at the time we put in the bases, and it was reducing the return which we were getting from our Birmingham mill. And, we did not want to quote on those bases any longer than was absolutely necessary. And we felt it was worth a trial to take them out and see how it worked. So, we discontinued using them about 1938, some time.

Q. Do you know, or do you recall whether or not your competitors followed the change in price?

A. I think that most of our competitors followed that change. I know, by this time, they all have fol-
23853 lowed it, but I am not sure as to just what time these various competitors of ours applied the prices which we were quoting in the field affected by those points.

Q. Well, now, to save time in asking you several questions, let me ask you, did you follow the same practice in discontinuing these same bases as you did when you put them in?

A. Precisely. We just sent out new prices.

23854 Q. Now, as to that, Mr. Coogan, did you give your competitors any advance notice or subsequent notice about this matter that you had discontinued these bases?

A. I gave my competitors or nobody else any advance notice. As I have already stated that, subsequent to the change, if they asked me what had been done I would tell them what I had done.

Q. Yes. I understand. What was your experience, when those new quotations went out, with regard to
23855 the other companies? Were they quoting on a lower price at the same time that you were quoting on a higher price?

A. Yes. They were quoting on the lower price until such time as they changed their quotations.

Q. How long did you meet these so-called depressed prices in New York and Boston?

A. We discontinued using them on July 7, 1938.

Q. What were the circumstances which led you to this action, Mr. Coogan?

A. Several days before that one of the companies had sent out new quotations which were picked up in the field by us, as I remember it, the 4th of July being Sunday, the

holiday was celebrated on Monday, and we found those quotations on the Tuesday morning following.

Now, coupled with the advance in prices at the territory where we had previously been quoting depressed prices, there was a reduction in the base figure used by them at the Lehigh Valley; this company had a mill in the Lehigh Valley, and there was also a new base established by them at Swedeland, Pennsylvania, which made a great
23856 many reductions in prices and, of course, there were some advances in prices in the territory in and around Boston and New York where we had been using the depressed prices.

Q. As I understand you, was there any considerable price change—I mean, any considerable territory in the east which was affected by this price change?

A. Oh, I should say in forty per cent, or maybe fifty per cent, of our territory the prices were reduced.

Q. Do you know who sent these quotations out first?

A. The Allentown Portland Cement Company.

Q. Do you know what the change was, Mr. Coogan?

A. The base figure which we had been using in the Lehigh Valley prior to that time was $1.55 stripped. The base figure which the Allentown Portland Cement Company used from their mill in the Lehigh Valley was $1.45 stripped and at the same time they used a base figure at their Swedeland mill of $1.55 stripped.

Q. Did you tell us how you learned of this price move?

A. Well, I found out the price move on Monday, found that out even though it was a holiday. A friend of mine who was in the building supply business told me about it, after having been notified by the Allentown Company and on Tuesday morning we had an avalanche of telegrams and telephone calls from our field men and, as I remember it, the matter of this change in price was published
23857 and publicized in the newspapers Tuesday morning.

Q. On what date did our company send out quotations meeting the new prices?

A. I think it was July 7 or 8, 1938.

Q. What happened on the dates between that, Mr. Coogan, did you sell any cement between those two dates, the 6th and 7th?

A. Oh, yes, we did. You ought to know that when a price goes out by one company, even though it is a lower price than that generally quoted by us, we will say, there

is no rush to buy cement from the company making the lower quotation. Our customers, a great many of them, will notify us and they expect us to give them the same protection that the other companies are giving to their customers.

Furthermore, it is generally accepted by them that we will meet any competition which we find in our field.

Q. Well, then, did you, in this interim, or did you not, sell at a higher price?

A. No, well we sold at a higher price, but we had to correct our invoices later on.

Q. What effect, if anything, did this situation have on your five days' notice of increase?

A. Well, it had no effect on it. We operated under that in the territory where prices were increased
23858 and used the five day retroactive feature in the territory where we were compelled to reduce prices.

Q. Now, again, Mr. Coogan, because of the charge in the complaint, I have to ask you: Prior to the change, did you have any discussions with your competitors regarding the removal of the arbitrary prices?

A. I did not.

Q. I do not think I asked you whether this price increase was in all your eastern markets.

A. Well, it was an increase in probably fifty per cent of the markets and a decrease in fifty per cent of the markets.

Q. Now, did you or did you not at the time you adopted the policy which you have described, whereby you refused to sell to dealers in the metropolitan New York area, and the Boston metropolitan area, did you sell to dealers who sold foreign cement?

A. For a time we did. And, so far as I can remember, there was only one case where a dealer tendered us an order, who was handling foreign cement, and we refused to accept it. There was one case, I think, in Boston, where we told the dealer we did not care to take on any business from him, but he never tendered us any order.

We had a rule in effect at all coastwise points—I had first seen it put into effect by a company in New Orleans, Louisiana, the Lone Star Company, I think it was
23859 1926 or 1927, and I watched the development of it, from reports received from that market, and we were favorably impressed with the success they made in handling

their business that way. So, some time in 1932 we put in a rule that where we found a dealer handling large quantities of foreign cement we would not accept orders from him for shipments of our cement.

Q. Well, from what you have said would you say that your company did or did not initiate that policy? That was my question.

A. No, it was initiated years before we adopted it.

Q. Do you have any idea as to the date? You mentioned the policy in New Orleans, Louisiana.

A. I think it was 1926 or 1927—1926 or 1927.

Mr. MacIntyre: Are we talking about initiating it in New York or New Orleans or Boston?

Mr. Leisure: I think the question is clear.

Trial Examiner Norwood: He said New Orleans.

By Mr. Leisure:

Q. You were talking about New Orleans?

A. Yes, sir; I was when I said that.

Q. You understood my question to refer to the same question? You mentioned, I think you said, the Lone Star in New Orleans had adopted some policy; I asked you the date.

A. That is correct.

23-60 Q. When was your policy first adopted in New York, Mr. Coogan?

A. It was some time in 1932.

Q. You have told us about New York. Did you adopt any similar policy in Boston?

A. We did some time later.

Q. Does what you have said with regard to initiating the policy in New York also apply in Boston? Were you the initiator of the policy in either of those ports?

A. No. I do not think so. We initiated the policy in neither one of them.

Q. Now, again, did your company consult any other cement manufacturers before you adopted this policy in New York?

A. No, sir. Not before we adopted it. We knew it had been adopted and we adopted it.

Q. Did you make any formal announcement of that policy in the market?

A. We did to our own organization, but it would be impossible to make an announcement, a public announcement,

because you would not know to whom to announce it because, today, it may be one man, tomorrow it may be another.

Q. I mean, what you did in regard to announcing it.

A. We simply notified our own organization, and instructed them to keep us fully posted as to the developments in the foreign cement importations and to let us know what was being done, and who was handling it, and to what extent.

23861 The witness identified Resp. Ex. 723 as a circular letter of Alpha sent out to its own organization, dated December 30, 1932; also Resp. Ex. 724 as a letter dated June 4, 1933 written by Alpha's Southern sales manager to 5 of its salesmen working out of that office.

23862 Trial Examiner Norwood: Received as marked.

(RESP. EXS. Nos. 723 and 724 were offered and received in evidence.)

Q. Now, there has been certain testimony in the record here of certain salesmen watching the yards of one dealer, I think the name was Jenny and Lax, as to their shipments of foreign cement. Do you know whether

23863 or not your salesmen were watching that yard or keeping any track as to what shipments they were making of foreign cement?

A. Jenny & Lax are importers of foreign cement in Boston, maintaining a stock of such cement on some of the piers there. Now, I do not know or I did not know that one of our men had taken any part in watching their truck or trucks from there until it was introduced, as I remember it, in a hearing during the N.R.A. in connection with the complaint made by J. P. Duffy, in Brooklyn.

Our New England and our New York men, in fact all of our men covering coastwise markets, had absolute instructions to keep us posted as to every detail of foreign cement that they could possibly lay their hands on. Now, it is possible, and, in fact, I think that has been a general policy of the company to do so—

Q. How long has that been a policy of your company?

A. It has always been a policy of our company to follow that through both as far as domestic cement is concerned and, in this particular market, more particularly, as to foreign cement, it has been our policy for more than 25 years.

Q. Now, do your salesmen keep you informed of competitive figures more or less and especially where you have foreign cement or do you have any instructions as to that, their keeping you informed in other places?

23864 A. No, they keep us informed at all places, they keep us informed of competition, they keep us informed of the quality of cement being handled and dealers, they keep us informed as to the brands being purchased by the dealers, and everything else that might help us to properly conduct our own business.

Q. You say the brands—I take it, you mean by that the name of the competitor's cement which is being sold by the dealer?

A. Yes.

Q. Is that what you mean by brands?

A. Yes, and the dealer very often sells several different brands.

Q. Do you remember whether you had any conversations with the local dealers who were handling this foreign cement?

A. Yes, I remember one or two occasions, I know I had a conversation with J. P. Duffy in New York, and I am quite sure I talked to a representative of the firm of Waldo Brothers in Boston. Those are the only two that I remember having talked to.

Q. Do you recall the action of your dealer trade with respect to this situation, as the result of your talking to these people?

A. Well, there was no particular objection to it, except in a very few cases, of the man who wanted to con-

23865 tinue to handle foreign cement and put it out on jobs where he could make a large profit on it, and then have domestic cement, or our brand available to put out on jobs where our domestic cement might be called for.

Q. Do you know a man by the name of Mr. Heckendorn?

A. Yes, I know him.

Q. What is his connection, if you know?

A. Well, he is with the Universal Atlas Company; I don't know his position.

Q. Did he discuss this matter with you, Mr. Coogan?

A. No, I never discussed this matter with Mr. Heckendorn; in fact, I have only talked to him two or three times, in my whole life.

Q. The reason I asked you that question, Mr. Coogan, the record shows that Mr. Heckendorn discussed this matter with some companies, and I am merely asking you whether or not your company is one of those he discussed it with?

A. Well, not so far as I know. Might I make a statement there?

I want it understood that in connection with this matter, while I know that I did not talk to Mr. Heckendorn, I have talked to my competitors about this particular thing. I have gathered every bit of information that I possibly could get which had bearing on the question of foreign cement.

23866 Q. How long has it been your practice to gather all the information you can bearing on foreign cement, Mr. Coogan?

A. Well, to my personal knowledge, since the importation of foreign cement became a serious factor in our business.

Q. Now, before the recess, you told us about the attitude of the United States Government with respect to the use of foreign cement. You said there was a differential, I think is the way you described it.

How much was it?

A. It was 15 per cent; later on raised to 25 per cent.

23867 Q. I mean, how long did your policy remain in effect?

A. I think that we took up the policy of refusing to sell dealers who handled foreign cement some time in 1935; we took it out in Boston, first, and later on—just a litttle later on—we took it out in New York and all other markets.

Q. What was your observation with respect to your competitors? Do you know whether they took it out or not?

A. I think, generally speaking, they did. However, I believe they are still—at least one important competitor follows the practice of not selling any dealers his cement who handle foreign cement.

Q. You say that you think some of them took it out. Do you have anything in mind as to when this was done? I have in mind with respect to your own action, whether or not it was done at the same time.

A. I don't know. I know that we decided in our own

company that we were going to take it out in Boston, and we did it, without consultation, or without talking with anybody, because we felt that it was entirely ineffective, because the dealers were interchanging domestic and foreign cement which wholly defeated the purpose we had in mind when we put in that rule, so that we discontinued it,
23868 and I am sure that after the whole thing was discontinued in New York and all other markets.

Q. Let me put it this way—were you the first to abandon it in New York?

A. I can't answer that. I know that we were first in Boston, and I think that we were certainly the first, or among the first, in New York.

Q. Was this subject matter, Mr. Coogan, ever discussed by you, or brought up by you, in any way, or by your company, with the Cement Institute?

A. No, I never heard that discussed at a meeting of the Cement Institute at any time.

Q. And do you know, to your knowledge did the Cement Institute have anything to do with it in any way?

A. The Institute did not attempt to handle such matters.

Q. Mr. Coogan, let me call your attention to
23869 Commission's Exhibits 1023-A, B, 527, 516-A, D, 1023-I-K, 868-7-K (handing documents to witness).

A. (Witness examines documents.)

Q. Let me just have them one second, until I finish the question on that.

A. (Witness returns exhibits to Mr. Leisure.)

Q. These exhibits relate to an undertaking by certain manufacturers to secure reduction of rail rates to Miami, Florida, and certain Southern Atlantic and Gulf ports, and to Boston, during 1935 and 1936. They indicate that the Alpha Company received copies of communications between certain other traffic managers and railroad associations.

Do you recall any of the circumstances surrounding this particular undertaking?

A. Yes, I am familiar with that undertaking, and the Alpha Company took an active part in it.

Q. When you say they took an active part in it, will you explain what you mean?

A. Well, I mean that they did everything that they possibly could in presenting to the railroads our request for

lower freight rates to the points where we were meeting foreign competition.

The railroads had lost a large amount of tonnage on account of the influx of foreign cement, and, of course, we had lost the business, and we did everything that we
23870 humanly could to get the rates to those particular points reduced so that we could more nearly meet the competition of foreign cement without taking ruination prices for our product.

Q. Do you recall what happened as the result of your efforts? Did you obtain rate reductions?

A. Yes. There was a rate reduction obtained from the Birmingham district to the Miami markets, and that was the only success that we had.

The rate to Boston was not reduced.

Q. One of these Commission's exhibits, 868-7-K is dated March 5, 1936. It is a letter from the traffic manager of the International Cement Corporation to the New England Freight Association.

Did you make any similar effort to get rates reduced into the metropolitan district near Boston (handing exhibit to witness)?

A. (Witness examines exhibit) Well, I am sure that we did. We did everything that we possibly could to get the rates into the Boston markets reduced. I don't know that it was similar to this, but, frankly, we have never hesitated to join in any cooperative movement which would give us a proper or better structure of freight rates on our products.

Q. Well, what was the purpose of the negotiation, Mr. Coogan (handing exhibit to witness)?

A. Well, the purpose of the negotiation was to secure lower freight rates on cement to Boston.

23871 Q. Yes.

Well, now, you will observe that the third paragraph reads:

"We gather that some question exists as to the effect the establishment of such reduced rates will have on the outlying districts, because of the possibility of trucking back from Boston. It is felt that this possibility is thoroughly covered in the proposal wherein you will find specific reference to the method of pricing cement which has for its purpose the prevention or curtailment of trucking."

What trucking does that have reference to, if you know?

A. That means trucking, getting cement into Boston, and trucking it back into the nearby interior territory, and where our prices were arranged so that they were based on the trucking costs from Boston, so as to prevent the dealers in metropolitan Boston from running all over the territory and taking the business away from the outside dealers. In other words, so far as our company was concerned, it was a method to protect our customers who were in competition with each other.

Q. Well, finally on this subject, I would like to ask you, Mr. Coogan, whether, to your knowledge, your com-
23872 pany ever had any understanding with any of its competitors that the established market price at these points, or anywhere else for that mattter, would be adhered to by your company, or by other companies?

Mr. Wooden: I object.

A. Well, I can answer only for our own company.

Mr. Wooden: I object. Hasn't that question been asked and answered a number of times?

Mr. Leisure: I do not think so.

Trial Examiner Norwood: I do not think it has with regard to this particular point.

Let him answer. Go ahead.

A. We had no agreement or understanding of any kind as to prices at any destination. I take it that that letter refers to the prices that were in effect by that company at the time that letter was written.

Q. I would like to call your attention now, Mr. Coogan, to another subject matter.

Commission's Exhibits 3192 and 3193,—suppose you just take them (handing documents to witness). They purport to be reports of a trade practice committee of the Association of Portland Cement Manufacturers, and also of the Portland Cement Association.

Will you tell us whether or not you were a member of the committee referred to in those exhibits?

23873 A. I was.

Q. Approximately how many members were there on that committee?

A. There were about 25 members on the committee, and they were chosen from all over the United States and Canada, so as to get a cross section of opinion from various parts of the country.

Q. Well, by that do you mean it had a cross section which represented different parts of the country?

A. It represented every part of the country; I think the names of the committee would show that.

Q. What were the circumstances which led up to the creation of this committee?

A. The committee was appointed in order to inquire into and to find out the best practices that were in effect in the industry in any section, and they then were to make a report embodying what they had found in so far as their investigation was concerned as regards practices of policies, and so forth.

Q. Did you attend all the meetings of the Committee, Mr. Coogan?

A. I attended, I think, all of the meetings. There were not a great many meetings.

Q. Well, as to the creation of this committee,—what was the procedure of the committee?

23874 A. As I remember it, the committee was created in about 1914, and the sessions which I attended were devoted to getting the practices which were in effect in different parts of the country, and where we found there was no difference, or where everybody thought that was the best practice, that was the practice that was included into the final report that was made to the association.

Q. Well, do I understand by that that this committee originated any of the reports of the practices referred to, to it?

A. Yes, this committee prepared and submitted to the association reports of their findings.

Q. And—of course—I mean, also did it originate any of the practices referred to in the reports?

A. No, I think not. I think that this committee did not originate any new practices. All it did was to consider the practices which were in effect by various companies; then, if there was a difference between them it was—we tried to arrive at a conclusion as to which constituted the best business practice.

Q. Now, Mr. Coogan, we have introduced in evidence during your testimony the quotation forms here of the Alpha Company from 1903 down to the present time. Do those represent the policy of the Alpha Company during that period of time?

23875 A. Yes, our policy is stated on those forms.

Q. Do they also, Mr. Coogan, show the extent to which the practices of your company, during and after the

reports of this committee, were similar or different from the practices recommended by that committee?

A. Yes, a study of those forms would indicate that recommendations we had followed, and what we had not. I might say that we followed some of the recommendations, and others we did not follow.

Now, in the event that any recommendation was more favorable to the general trade than the policy which we had been using, and if that should be adopted by any one company or two—or any important company—it would immediately be necessary for us to follow that competition in order to keep in the particular markets involved.

I think some of the recommendations the Alpha Company followed; some we never followed.

Q. Now, Mr. Coogan, if I had time I would like to take these up individually and compare them. Without doing that, what has been your experience? Can you tell me, generally, what effect the reports of this committee have had on the practices and policies of the Alpha Company?

A. Well, the action of this committee had no effect on us, if there was a report brought out and any new policy, or any different policy from what we were using, if 23876 we felt that that was a better policy than ours, we certainly would have no hesitancy in putting it in. I have stated before that if anything more favorable to our customers was brought out by any of our competitors, we must, of necessity, immediately meet that competition.

Q. As far as your company is concerned, was there any understanding, or agreement, as to whether the Alpha Company would or would not follow the recommendations of these committee reports?

A. No, sir, there was no understanding. It was simply prepared, issued, and distributed on the basis of constituting what that committee considered the best practices prevailing at that time in the Portland cement industry.

Q. Was there any obligation of any character upon your company to adopt or follow any of the recommendations of the committee?

A. There was not.

Q. And, of course, as part of that, was any attempt ever made to enforce those recommendations by this committee?

A. There was no attempt at enforcement, no machinery set up for enforcement, and after the committee had gathered together what they considered the best set of prac-

tices, the committee was disbanded, I think along about 1918 or 1919, and has not functioned since that time.

23877 Q. I think the record shows, Mr. Coogan, that your company joined The Cement Institute at the time of its formation in the fall of 1929.

A. That is correct.

Q. Let me call to your attention Commission's Exhibit 136-3K, 3L, which appears to be the minutes of a meeting of May 12, 1931, and it shows that a letter of resignation of the Alpha Company was read at that meeting.

Did your resignation become effective?

A. Yes, our resignation became effective at the time we tendered it, but, of course, under the by-laws, as I remember them, there was a provision that upon resignation a member would have to continue to pay dues for the subsequent year, and we continued paying dues until that time.

Q. So, then, you were active members for what period of time,—from 1929 until—

A. Until the early part of 1931.

Q. What is your experience, Mr. Coogan, during your active participation—what, if you know, were the reasons for the formation of The Cement Institute which you joined at that time?

A. At that time there were a great many organizations being formed to represent various industries in trade practice conferences before the Federal Trade Commission, and one of the principal purposes in forming

23878 the Association in 1929 was for the purpose of submitting a trade practice report, and asking for a conference in the hope that it might help in the general conduct of our business.

This did not materialize. There were delays. No conference was ever held. And during, or before 1931, there had been quite a few resignations. We were very insistent on the holding of the trade practice conference, and when we found that it did not seem practical to get one at that time, we resigned from the Institute.

Q. The Cement Manufacturers' Protective Association has been mentioned here frequently; when had it ceased to operate, if you know?

A. I think the Cement Manufacturers' Protective Association ceased to operate in 1924.

Now, the Alpha Company had always been one of the

companies that felt that the Cement Manufacturers' Protective Association should be continued. The conduct of the Association had been litigated, certain of the work had been approved, and declared legal, and we felt that it was a mistake not to continue the Protective Association, and when the Institute was formed, in addition to the Trade Practice Conference, it was proposed that that Institute carry on the work which had formerly been performed by the Cement Manufacturers' Protective Association and which had been approved by the courts.

The witness identified Resp. Ex. 725 as an Alpha letter, dated January 14, 1930, addressed to Mr. Blaine S. Smith, president of The Cement Institute.

23879 Mr. Leisure: I offer it in evidence.

Trial Examiner Norwood: Received as marked.

23887 (RESP. EX. 725 was offered and received in evidence.)

Mr. Leisure: I ask to have marked for identification a letter dated January 27, 1930. Also, the second page

23888 thereof which appears to be an enclosure.

(The letter and the enclosure therein were marked, respectively, Respondents' Exhibits Nos. 726-A and 726-B for identification.)

The witness identified Resp. Ex. 726-A as an Alpha letter signed by G. S. Brown, at that time president, dated January 27, 1927, addressed to Mr. Blaine S. Smith, president of The Cement Institute; Resp. Ex. 726 B as an extract which was attached to Resp. Ex. 726 A, taken from the Whaley-Eaton Service, dated January 29, 1930.

(RESP. EX. 726-A and 726-B was offered and received in evidence.)

23889 By Mr. Leisure:

Q. Mr. Coogan, you have already told us that the Alpha Portland Cement Company resigned from the Institute in the spring of 1931. You have not told us, however, the circumstances leading up to that occasion on your part. Will you please do so?

A. Well, I have stated that we joined the Institute at the time it was formed, expecting that there was going to be a trade practice conference arranged.

Q. I mean, as to the resignation, if you will excuse me.

Trial Examiner Norwood: I think he told us about the trade practice conference.

A. By the time, 1934, there had been no conference, and there had also been some resignations from the Institute. It was our feeling that unless the Institute membership represented almost all of the industry that it was useless to continue. Now, the matter of expense at that time did begin to pinch in a little way, and while the expense involved in the Institute was very small, but at that time we were looking to save every dollar that we possibly could.

23890 Q. You told us this morning, I hesitate to try to phrase your language, because I might get it wrong, Mr. Coogan, but you told us something about your believing at the time that you belonged that there would be some trade practice conferences with the Federal Trade Commission. I am merely trying to find out what happened. I am not trying to quote your testimony.

A. Well, I am not familiar with everything that happened. There were, I think, some meetings with Federal Trade Commission by representatives from the Cement Institute but so far as I know, no formal trade practice conference had ever been arranged.

23891 Q. Now, at the time that you resigned had others also resigned?

A. Yes. Well, there had been quite a number of resignations when we resigned.

Q. As to these meetings with the Federal Trade Commission, which you have just described, when you said you thought certain—without trying to use your exact words, that you did, that you believed certain representatives of your committee had met with the Federal Trade Commission. Was that a substantial representation of the industry or did you believe it was a substantial part of the industry that entered into these meetings or negotiations?

23892 Well, I do not know how many.

By Mr. Leisure:

Q. Well, if you do not know how many, do you know whether or not it represented—have you any idea as to whether it was one person or whether it was the entire industry that was represented?

A. Well, of course, any conferences that were had were with people representing the Institute and, therefore, representing whatever percentage of the industry was represented in the Institute.

Q. Well, then, can you get at it in this way: Do you know what percentage of the industry was represented by the Institute?

A. I could not hazard a guess on that at the present time, but it was a large percentage, very large.

Q. When your company did resign from the Institute did you continue to receive any services from the Institute?

A. No. The services were discontinued with our resignation. I think we continued to get the service up until the time that we had paid our year's dues, as provided for in the bylaws.

23893 Q. Now, let me call your attention to exhibits.

Mr. Leisure: I ask permission to mark for identification a letter dated March 2, 1932.

Trial Examiner Norwood: It may be marked for identification as Respondents' Exhibit 727.

Mr. Leisure: And a document dated March 1, 1932.

Trial Examiner Norwood: It may be marked for identification "Respondents' Exhibit 728."

(The documents referred to were thereupon marked for identification as Respondents' Exhibits 727 and 728.)

The witness identified Resp. Ex. 727 as a letter dated March 2, 1932, signed by Mr. Apgar, Alpha's traffic manager, and addressed to the secretary of The Cement Institute; Resp. Ex. 728 as a Cement Institute letter dated March 1, 1932 addressed to the witness at Easton. All of Mr. Apgar's department and this correspondence was carried on under his direction.

23894 (RESP. EXS. 727 and 728 were offered and received in evidence.)

Mr. Wooden: Do you propose to offer the pencil notations?

By Mr. Leisure:

Q. Mr. Coogan, I show you certain pencil memoranda on Respondents' Exhibit 728; do you know what it is?

A. The pencil writing on this letter are notations made by Mr. Apgar, our traffic manager, and evidently refer to the different States in which we shipped and which we were interested in freight rates.

Q. Do you recognize Mr. Apgar's writing?

A. I do.

Q. Now, what was your experience, Mr. Coogan, during the time that you were members of the Institute? Did

your company subscribe to the principles set forth in the Code of Ethics of the Institute?

A. Our company never signed the Code of Ethics that was prepared shortly after the Institute was formed, and which Code was prepared for the purpose of submitting to a Trade Practice Conference which was hoped could be arranged later on.

Trial Examiner Norwood: I think you have an-
23895 swered this question quite a while ago.

The Witness: Not about the Code of Ethics.

Trial Examiner Norwood: He asked you if you signed it.

The Witness: What was the last that I said?

(Last answer read by Reporter.)

A. As a matter of fact, the provisions of the—

Trial Examiner Norwood: I think you have answered the question.

By Mr. Leisure:

Q. Mr. Coogan, was any machinery set up for the enforcing of the Code of Ethics?

A. None whatever.

Q. Do you know whether there was any provision for complaints concerning violations of the Code of Ethics by members of the Institute?

A. For a short time there had been forms prepared, said I think in two or three cases there were forms sent out asking for information about certain things that had been done.

Q. Now, you say "asking for information." Were they forms intended to provide any method of enforcing the Code of Ethics?

A. No, they were simply to get information; but there was no method of enforcement.

Trial Examiner Norwood: Get information as to whether they were complying with the Code of Ethics?

23896 The Witness: No, as to whether the statements that were made were true, some of the things which were taken up were abuses by customers.

The witness identified Resp. Ex. 729 as a Cement Institute form, dated December 2, 1930, addressed to him at Easton; Resp. Ex. 730 as a letter from him dated November 28, 1930 addressed to The Cement Institute;
23897 Resp. Ex. 731 as a Cement Institute letter dated November 24, 1930, signed by the general manager, and addressed to Mr. Brown, Alpha's president.

Mr. Leisure: I offer them in evidence (handing documents to Mr. Wooden).

23898 Received as marked.

(RESP. EXS., 729, 730, and 731 were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, do you know whether any further report, or letter, was written in connection with the subject matter of this complaint (handing Respondents' Exhibits 729, 730, and 731 to the witness)?

A. No, this ended the correspondence.

Q. Was there any—

A. You will note that the complaint form itself was never answered. There was simply a letter came in which was dated November 24. My reply was dated November 28, and the complaint form was not dated until December 30. There was nothing further done about it.

23899 Q. Was there any penalty, or any attempt to impose any, on your company for this alleged violation?

A. No, sir; I never heard anything further from it.

Q. Mr. Coogan, I wish to call to your attention a Commission's exhibit, by number 141-28 (handing paper to witness).

Was that a complaint by your company against the Hercules Company?

A. We didn't consider this a complaint. We simply considered it a report to the company who had a customer that was abusing a contract for a specific purpose which they had with it, and we simply passed it along as a matter of information, and not as a complaint.

Q. Mr. Coogan, did you personally have anything to do with this transaction?

A. This was handled under my direction.

23900 Q. Go ahead and tell us what happened as you recall it.

A. —by our chief clerk in the sales department.

Q. Tell us what happened as you recall it.

A. This simply notifies the Cement Institute that a block manufacturer in Wildwood, N. J., who was protected by a Hercules contract covering his block plant requirements is able to sell cement to dealers in Wildwood at a price very much lower than we are quoting at the present time.

Q. You told us, Mr. Coogan, that that was an abuse by a dealer that you were reporting. What was the abuse?

A. Well, at that time it was our policy, and the general policy in the industry, to sell to concrete block plants under contracts for their own requirements only, and not for re-sale, and at that time all contracts were re-
23901 ported to The Cement Institute here. They were tabulated by them and sent out to the members, so that we knew what contracts were in existence.

Q. And does this represent all of the correspondence on the subject? Was there any further correspondence on the subject?

A. No further correspondence at all.

Q. Did your company take any further steps about it in any way?

A. No, sir; we did not.

Q. You have mentioned just now contract reporting activity of the Institute. What did you have reference to?

A. When we belonged to the Institute they had a form of contract reporting, where companies, after contracts had been closed, reported to the Institute the full information about the contracts, except price, which was never filed.

Those contracts were tabulated daily and sent out to the members of the Institute, and then at the end of the month there was a recapitulation made and a tabulation sent out of the outstanding contracts.

Q. Now, what was your experience, Mr. Coogan? Did you or did you not find that the contract reporting, and checking, as you have described it, was of any value to your company?

A. It was of great value to our company in preventing abuses of our contracts for specific jobs by our customers.

Q. How did it prevent abuses?

A. Well, the outstanding cause was duplications.
23902 Some dealers would get a contract for 2,000 barrels of cement, and they would close that contract with four or five different companies, in order to get protection for an indefinite amount of cement in case we should advance our price of cement in those markets.

Trial Examiner Norwood: That has been explained to us a good many times.

By Mr. Leisure:

Q. As to the statistical service of The Cement Institute, did you observe any difference in the nature of the information published by it, and the Bureau of Mines?

A. No, there was no—there is no substantial difference. As a matter of fact, the Bureau of Mines published a little more information than The Cement Institute, in some respects, and, in one respect, the Institute published a little more than the Bureau of Mines.

For example, the Institute figures of shipments, production, stocks on hand, are shown for individual companies in the districts. The figures from the Bureau of Mines are shown from a total; the Bureau of Mines, however, issue a report showing shipments into States, which is not issued by The Cement Institute.

Q. Well, of what advantage was it, Mr. Coogan, to have the performance of individual companies, as distinguished from the performance of nearly all companies in a given district?

23903 A. There is no advantage; it is simply more information.

Q. Well, do you mean that that additional information was of no advantage, when you say "of no advantage"?

A. Well, of course, it is—it enables our company to find out whether they are keeping pace with the industry as a whole, and with their individual competitors.

Q. You mentioned the Cement Manufacturers' Protective Association. Was this feature something which it did as a statistical service?

A. It did, in exactly the same form.

Q. In the contract checking of the Institute, were prices shown?

A. No, they were not.

Q. Do you know whether or not they were in the service furnished by the Cement Manufacturers' Protective Association?

A. No, sir; they were not.

23904 The witness identified Resp. Ex. 732 as an annual report form of the Bureau of Mines which shows the stock on hand at the end of the previous year, the cement made during the year, the balance on hand at the end of the year, and the stock on hand; Resp. Ex. 733 as another annual report of manufacture and shipments;

Resp. Ex. 734 as a Bureau of Mines form for reporting monthly shipments into various states; Resp. Ex. 735 as a duplicate of Resp. Ex. 732; Resp. Ex. 736 as a report by the Bureau of Mines showing the shipments into each state for the months of May and June 1938 and 1939 and the total shipments into each state for the first 6 months of 1938 and 1939; and Resp. Ex. 737 A and B as a monthly report issued by the Bureau of Mines:

23905 *Examination by Trial Examiner Norwood.*

These papers are sent to Alpha for the purpose of making out its reports to the Bureau. The witness identified Resp. Ex. 738 A to G as an entirely different thing which shows all annual statistics. In addition to the information contained as to the domestic industry it gives information as to special cements, foreign cements and exports of cements.

23907 *Examination on the Voir Dire.*

By Mr. Wooden:

Q. Mr. Coogan, referring to Respondents' Exhibit No. 734 for identification, does the Alpha Portland Cement Company make up statements and submit such information as this to the Bureau of Mines regularly?

A. Yes, every month.

23916 (RESP. EXS. 732, 733, 734, 736, 737-A, 737-B, 738-A, 738-B, 738-C, 738-D, 738-E, 738-F, and
23917 738-G, were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, I would like to call your attention to a Commission's exhibit, No. 3008-A to C, and according to that exhibit your company subscribed to the statistical service from W. S. Mallory, July 1, 1926, to August 31, 1933. Is that correct? Did your company so subscribe?

A. Yes, we subscribed to the Mallory service.

Q. What was your experience, Mr. Coogan? What were the circumstances which led you to subscribe to that service?

A. Well, after the service had formerly been given us by the Protective Association, and when Mr. Mallory started up this private bureau, we subscribed to it because

we felt that the information which we received from Mr. Mallory, and from the Bureau of Mines, would enable us to more satisfactorily project our production schedules and to run our business in a thoroughly intelligent manner.

Q. Did you, at the time of subscribing, or at any time, during the period of your subscription, know who the other subscribers to the service were?

A. No. This is the first time I have seen the list of the subscribers to the Mallory service.

Q. Of what did that service consist at that time when you first subscribed to it, Mr. Coogan?

A. Well, the principal service of Mr. Mallory was the statement of production, shipments, stocks of
23918 cement, stocks of clinker on hand, and he gave a forecast based on the Dodge reports, and other engineering information as to the probable consumption of the different users of cement.

He also furnished a report showing the stocks of cement on hand reduced to the number of days' supply based on information which he had tabulated from year to year.

Q. Did you find the service of any value to you in the operation of your company?

A. Well, yes, we found it of value, because we could get from it what the probability, or at least an estimate of what the probable demands would be, and also keep track of the supplies which were on hand to take care of that demand, and it enabled us to arrange our production schedule in a much more satisfactory manner than if we did not have the information.

Q. Did you ever consult with Mr. Mallory during this period about your capacity or your rating of your plants, or of any other cement plant?

A. The only time that I ever consulted with Mr. Mallory as to production ratings of ours, or any other companies, was during the time that there was some work being done by the Allocation Committee, under the N.R.A. At that time we furnished him with a lot of figures, and I have seen a great many statements which were prepared by Mr. Mallory for use in the Committee.

23919 Q. You said that the service consisted of statistics and stocks and production and shipments. Did this information come to your attention, Mr. Coogan?

A. Yes. It always came directly to my attention. It was then handled by our statistical department for what-

ever use they wanted to make out of it; it was handed to them, and then filed for future reference.

Q. Now, during the time that your company was a member of The Cement Institute, did you ever furnish estimates of your companies' capacities to The Cement Institute?

A. Not to my knowledge.

Q. You mentioned, a moment ago, the Allocation Committee of the N.R.A. Code. Did you furnish such information during that time to them?

A. Yes. I think we did.

Q. Do you know, Mr. Coogan, how estimated capacities of your plants were arrived at for the purpose of the proposed plan for sharing available business under Article VIII of the N.R.A. Code?

A. Well, I know that any figures,—that were figures that we submitted,—were based on our past experience and productive record of the various plants.

Q. It already appears in the record that the capacity of your plant today totals something in the neighborhood of 12,500,000 barrels a year, Mr. Coogan. Can you tell us how that estimate is based? Is it on the use of
23920 a three-large-months-of-production basis, or how is the formula arrived at?

A. Yes. It is based on past performance and experience.

Q. Mr. Coogan, did you furnish the Bureau of Mines with the capacities of each of your plants, and do you?

A. We do.

Q. Now, you say you furnished it to them. Did you attempt to keep that a secret in any way, that information, as to the capacity of the Alpha Portland Cement Company's plant, I mean?

A. No. The matter of the capacity of our plants or of any other cement plant or plants is not a secret
23921 in any sense of the word, and can easily be ascertained or obtained by anybody with ordinary average intelligence. In fact, it is known to the workmen around the mill, and to the people who live in the neighborhood. So, there is no secret of capacity. And, our own company has never made any attempt to make a secret of it.

Q. Did you furnish The Cement Institute with any in-

formation or reports, or do you, on the capacity of your plant?

A. No, I do not think they are furnished with any reports on capacity of our plants except as I have stated what was furnished during the work of the Allocation Committee under the N.R.A.

Q. There was considerable testimony, Mr. Coogan, during the Government's case concerning not only standard cement but certain kinds of special cements. Does your company collect any figures which show what portions of your total production and shipments are standard Portland cement and which are special cements?

23922 A. Under today's marketing conditions, there are many variations of standard cements. A few years ago we had just one standard. Today there are many devised by different engineers. Our company keeps no separate records of how much of each kind of such cements are manufactured; we put it all under one head.

By Mr. Leisure:

Q. What use, if any, do you make of these statistics furnished by The Cement Institute, Mr. Coogan?

A. Well, we use the figures from The Cement Institute—for, first, the important thing is to find out that our business is kept up with our competitors, and we certainly don't want to lag behind, and we do everything we can to bring that up.

We really get more information from the Bureau of Mines' reports which furnish the individual shipments into States, and also the average price received.

23923 Q. You said "kept up." Do you mean that you try to sell as much as you can, or what do you mean by that?

A. We try to sell every barrel of cement that we possibly can sell.

Q. Does it make any difference to you how the balance of the shipments in a given district are divided between any other companies?

A. No, it makes no difference to us, except as a matter of general interest.

Q. Now, during that period from 1931 until 1933, when you say the Alpha Company rejoined The Cement Institute, did your company have any connection with the Institute?

A. No, none whatever.

Q. What were the circumstances which led your company to become a member again in 1933, as you have described?

A. At the time we joined in 1933 the N.R.A. had been started, and industries were asked to form organizations in order to prepare and submit codes, and that was our reason for joining in 1933.

23925 Washington, D. C.,
September 26, 1939.

23930 F. M. COOGAN thereupon resumed the stand and
23931 testified further as follows:

Direct Examination (Resumed) by Mr. Leisure.

Q. Mr. Coogan, have you ever been a trustee of The Cement Institute?

A. No, sir.

Q. Have you ever been an officer of The Cement Institute?

A. No, sir.

Q. Now, according to the record in this case, Mr. Coogan, you were a member of the Code Authority, the N.R.A. Code Authority, for the cement industry. Were members of the Code Authority during the time that you served also members of the board of trustees?

A. No, indeed. Some of them might have been on the board of trustees, but I don't recall any.

Q. You understand that I am referring to the board of trustees of The Cement Institute?

A. Yes, sir.

Q. Did the Code Authority, while you were a member, hold regular meetings?

A. No, there were no regular meetings. Meetings were called whenever the chairman of the Code Authority felt it was necessary.

Q. To your knowledge, did these meetings have any connection with, or were they held in conjunction
23932 with, or as part of, the Institute meetings, the meetings of the trustees of the Institute?

A. The meetings of the Code Authority were entirely

separate and distinct from any meetings of the Institute or its trustees.

Q. What was your experience? Was it the practice for officers of the Institute, or trustees of the Institute, who were not members of the Code Authority, to attend Code Authority meetings?

A. No, that was not the practice.

Q. As to the organization of the Code Authority, do you know whether or not it had its own budget and expense account?

A. Yes, it has its own budget and separate expense account.

Trial Examiner Norwood: All that has been told us some time ago by the secretary of the Institute, the manager of the Institute.

By Mr. Leisure:

Q. What was your personal experience, Mr. Coogan, with the activities of the Code Authority? While you were active did these activities parallel in any way the activities of the Institute?

A. No, they were entirely separate and distinct from the Institute.

Q. Now, I think the record shows, Mr. Coogan, that the supposed articles of the N.R.A. Code of Fair Competition, which provided for f.o.b. destination prices—well,
23933 first, let me ask you: Do you recall if that is or is not a fact?

A. That the original draft of the Code provided for destination prices only?

Q. Yes.

A. That is correct.

A. My answer refers to the proposed Code.

Q. Let me ask you, What action did the Alpha Company take with respect to that?

A. Well, the Alpha Company took no action with regard to it, because as a matter of fact that is the way we had been conducting our business, and so far as our own company was concerned we were perfectly agree-
23934 able to quoting destination prices as we had been doing prior to the Code.

Q. Now, again, as far as your company was concerned, were there any restrictions under the Code as adopted upon the kind of prices that members could file?

A. No, there were no restrictions whatever. You could file any kind of price that the company cared to.

23935 Q. Mr. Coogan, after the Code was in operation, do yo remember whether or not the Alpha Company ever filed f.o.b. mill prices?

A. Yes, I think we filed f.o.b. mill prices in case of sales to the Government where land grant rates were involved.

Q. What position was taken as far as your company was concerned? Did the Code Authority attempt to control what prices you would file?

23936 A. Oh, no, not in any way.

Q. Was there any attempt to call your attention to any errors, if any were mad , Mr. Coogan, by the Code Authority?

A. No. So far as our own company is concerned, I never remember that the Code Authority called our attention to anything, about any filing which we made. From my experience as a member of the Code Authority, I have seen correspondence, copies of which were sent to me, where on a few occasions they have called different members' attentions to filings, but, of course, it was up to the filer himself to decide what price he wanted to file, and after his attention was called to anything that the office force might have felt was an error, or something of that sort, it was up to the filer to decide what price he wanted to file, and after he filed that price it was accepted and put on file in the Code Authority.

Q. Did you ever take any action in connection with such letters?

A. No, I never did. I simply read the letters and kept myself informed but took no action whatever.

Q. The record shows in this case—at least, there has been oral testimony to that effect—that if a particular price was filed with the Code Authority there

23937 was no requirement that all members must quote the same price. Does that correspond with your experience, Mr. Coogan, and with respect to—

A. No, there was no obligation on the part of anybody to quote that same price. If they felt like quoting a higher price, they could do it; if they felt like quoting a lower price, they could file a lower price and quote it.

Q. Did you take any action with respect to the open price filing provided for in the Code?

A. Well, when the Code went into effect we followed the provisions of the open price filing.

Q. What was the action by your company? Were you in favor of that, or not?

A. Yes, we were in favor of open price filing under the Code.

Q. Why, Mr. Coogan?

A. Well, we felt it prevented secret rebates and concessions and discriminations as between customers.

Q. What was the difference? Had you any more information by virtue of these open prices than you had in the operation of your business prior to the inception of the Code?

23938 A. I don't think that we had any more information under open price filing. It was perhaps a little more authoritative than what we had prior to the adoption of the Code.

By Mr. Leisure:

Q. The record also shows, Mr. Coogan, that after the Schechter decision invalidating the N. R. A., there were certain public statements by President Roosevelt and Mr. Donald Richberg, and others prominent in National Administration concerning the future action of industry as a result of that decision.

What, if anything, did the Alpha Company do with respect to that situation?

A. The Alpha Company decided that in the interim they would follow the policies which they had been following under the Code, and we sent out a circular letter to our own organization notifying them to that effect.

23939 The witness identified Resp. Ex. 739 as a letter dated June 5, 1935 sent by him to all Alpha's district sales managers and salesmen.

(RESP. EX. 739 was offered and received in evidence.)

23940 Q. What happened to this Code Authority of which you were a member, Mr. Coogan?

A. After the Schechter decision, the Code Authority, as such, disbanded. There was— And in the interim there was what was called a Trade Practice Committee appointed by the President of the Institute to take over and to carry on temporarily the work which had been carried on under the Code by the Code Authority.

Q. There has been some discussion here of the Trade Practice Committee. When you say that the president of the Institute appointed it, whom do you have reference to?

A. The president at that time was Mr. Coffin.

Q. Is Mr. Coffin alive at the present time, do you know?

A. No, he died several years ago.

Q. Now, the record shows, Mr. Coogan, that you were a member of that Trade Practice Committee. What were your activities? What were its purposes?

A. As a matter of fact, that Trade Practice Committee consisted entirely of the Code Authority that had been in office when the Schechter decision came out. After that time we—under the Trade Practice Committee we continued for a time the activities as they were prescribed
23941 under the Code. Gradually this work was discontinued. Of course, after the Code it was entirely voluntary. There was the filing of prices and we did for a time handle complaints; that is, we handled them to the point of letting anybody know what somebody else had said about any action which they might have taken as regards prices, terms, or policies, but we didn't go any further than that because we had no authority whatever.

Q. You say "complaints," Mr. Coogan. What is your recollection as to that? What do you mean by that?

A. I mean that complaints that had formerly come up under the Code and had been referred to the Code Authority, when any such complaints came up in the interim period, they were simply—the parties interested were simply notified. So far as I was personally concerned, I don't remember ever having filed a complaint, and I don't think I ever received one as having been filed against me.

Q. Well, what did you do with them, Mr. Coogan? What authority did the Trade Practice Committee have to deal with them?

A. They had no authority whatever. All they did was to notify the interested parties and took no further action whatsoever.

Q. Now, the record shows, Mr. Coogan, that this Trade Practice Committee was instrumental in compiling the so-called compendium of established marketing prac-
23942 tices, Commission's Exhibit 561. Did you have any participation in that, or in the distribution of the compendium?

A. Well, so far as I was personally concerned, I took

very little interest in either the preparation or distribution of the Compendium of Trade Practices. I didn't believe in it, and so far as our own company is concerned, we received two copies of the compendium, one of which came to me and one to our president, and upon my recommendation we took no further action with it and did not distribute the compendium to our organization. We simply each kept the copy that had been sent us and paid no further attention to it.

Q. Well, what about your own company? Following the issuance of that Trade Practice Compendium, did the Alpha Company in any respect change any of its practices which it had theretofore followed?

A. No, we didn't change any practice at all. We simply continued the practices that we had been pursuing while the Code was in effect.

Q. Do you know whether or not minutes were kept of the Trade Practice Committee?

A. Yes, sir.

Q. Well, now, as to the meetings that you attended, what took place at those meetings? I am referring to the Trade Practice Committee.

A. Well, I wouldn't want to—I wouldn't recall
23943 just what had taken place. I think the minutes would be the best history of what had taken place. There were very few meetings held by the Trade Practice Committee after the Schechter decision, and I have no distinct recollection of any question that was taken up at any particular meeting.

Q. Do you remember, Mr. Coogan, whether at any meeting that you attended your committee reached any agreement as to issuing any Trade Practice Compendium or rules?

A. Well, there must have been some sort of an agreement reached as to the distribution of the Compendium of Trade Practices. I am quite sure that I was opposed to the preparation and distribution of this Compendium of Trade Practices.

Q. I would like to call your attention to a Government exhibit here, Exhibit 879-2W, 879-2X; that is, a letter, Mr. Coogan, from Mr. Reiter, dated October 25, 1935. Did you reply to that letter (handing the letter referred to to the witness)?

A. No. No, I don't think I made any reply to that letter.

Mr. Leisure: I ask to have marked, for identification, a letter purporting to be dated October 28, 1935.

(The letter referred to was thereupon marked for identification "Respondents' Exhibit 740.")

The witness identified Resp. Ex. 740 as a letter
23944 from him, dated October 28, 1935, addressed to Mr. Reiter, chairman of the Trade Practice Committee and makes in error his previous statement that he had not replied to that circular letter because this is the reply.

By Mr. Leisure:

Q. Mr. Coogan, did you object to the filing of prices?

A. I did.

Q. Yes. What were your reasons?

23945 A. I thought it was entirely useless to take the time and trouble to file prices unless there was some practice such as the N. R. A. Code in effect.

Q. What period are you talking about when you say you did objec , Mr. Coogan?

A. After the Schechter decision and during the time that the Trade Practice Committee was in office.

(RESP. EX. 740 was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, were you on the Marketing Research Committee?

A. Yes, sir.

Q. Were you a member at the time of its formation?

A. Yes, sir.

Q. What were the circumstances of its formation, if you know?

A. Well, as I remember it, at the time it was—at the time Mr. John Trainor was still living. He had certain connections in Washington and at that time we were
23946 negotiating with the T. V. A. for the cement required for the work being carried on by them; and it was largely at his suggestion backed by some other members in the industry that it was decided that we should employ the best available economists to make a study of the marketing problems of the cement industry, and in line with that there was a committee appointed at one of the meetings of The Cement Institute to employ economists and to make the study of the industry.

This committee was appointed. We worked with the economists working out questionnaires for submission to

the different members of the industry, and did everything that we could to acquaint them with the policies that were in vogue in the industry, and so far as our company is concerned, and I think that is generally true of most companies, we answered in detail the questionnaires which had been prepared.

Q. Let me call your attention to a Commission exhibit, Commission's Exhibit 571-2L, 2M, and 2N. It is a letter dated October 3, 1935, from Mr. Blaine Smith to Mr. John Treanor.

He says: "Although all of the members of the committee in the East have had in mind the same objective that you are evidently striving for, namely, attempting to mold the professors' minds before any definite conclusions have been reached, it has been our thought that much more can be accomplished by personal contact rather than through the medium of correspondence."

23947 A copy of that letter was sent to you, Mr. Coogan, and you were a member of the committee. What were your objectives? Are they described there? Was one of your objectives to mold the professors' minds?

A. I received a copy of the letter which is referred to, and I read it over. It was my own objective to simply see that the professors or economists had all of the correct and true information on which they could arrive at an appraisal of the cement industry, and I am quite sure that Mr. Smith's letter does not—at least, to me, did not mean anything except trying to give them the whole truth and the whole picture of our industry.

Q. On Commission's Exhibit 913-4H, which is a letter from Mr. Treanor to Mr. Smith, dated September 11, 1935, the following appears:

"Personally, I am well pleased with the tone these men are taking. It is friendly, not dogmatic, and our main objects are to establish in their minds the importance of overhead and idle capacity in our industry, which makes old fashioned unrestrained competition simply unworkable and some form of market control necessary."

And he goes on to say further: "It is now our objects to convince them that the particular solution of this marketing problem which we use in the cement industry is not hurtful to the public."

23948 Mr. Treanor in this letter, Mr. Coogan, is writing to a member of your committee. Can you tell me

from your experience with the committee whether or not it was one of your main points to establish the importance of overhead and idle capacity in the industry, as described by this letter?

A. Well, before—

Trial Examiner Norwood: That is giving him a pretty good answer.

Mr. Leisure: I read what appeared in the letter. I withdraw the question on the Examiner's suggestion. I withdraw the question and leave the quotations in.

By Mr. Leisure:

Q. Mr. Coogan, what was your experience? Will you explain whether or not that letter correctly describes your activities as a member of that committee?

A. Well, I received a copy of the letter referred to, and I don't know what Mr. Treanor had in mind, but of course anybody in making a study of the conditions in the cement industry must take into consideration overhead, idle capacity, and all other matters which affect the marketing of cement. And I presume that that is the same thing that I had in mind.

I never made any reply to that particular letter, and I don't know that I, individually, ever discussed that letter with Drs. Burns or Clark.

Q. Were you also a member of the Tariff Com-
23949 mittee of the Cement Institute, Mr. Coogan?

A. Yes. I have been a member of the Tariff Committee of The Cement Institute since it was formed.

Q. I want to call your attention to Commission's Exhibit 619-A to C, and it appears on Exhibit 619-B that the trustees of The Cement Institute authorized the appointment of the Tariff Committee on March 15, 1934, and as part of that I notice on April 4, 1934, Commission's Exhibit 890-2G, which purports to state the membership of that committee.

Will you look at it and tell us whether of not there were any other members to that committee (handing a document to the witness)?

A. No. I think that this represents the full committee at the time it was appointed.

23961 The witness identified Resp. Ex. 742 as a letter dated August 29, 1934, sent out by the Secretary of the Cement Institute to the members of the Tariff Committee.

By Mr. Leisure:

Q. Do you recall the meeting referred to in that exhibit, Mr. Coogan?

A. I recall the calling of the meeting, but I do not remember anything that transpired at the meeting. There were minutes kept of the meeting, of course.

Q. You do not recall now what happened at this meeting?

A. No, I do not.

Mr. Leisure: I offer it in evidence (handing the paper to Mr. Wooden).

Mr. Wooden: In view of the non-acceptance of the proposal I made a while ago about the subject matter of
23962 the tariff as related to this case, I want to stand on the legal objection that I made hitherto and object to this proffer on the ground that it is irrelevant and immaterial.

Mr. Leisure: I would like to be heard on that, if Your Honor wishes me to be heard—

Trial Examiner Norwood: Yes.

Mr. Leisure: —wishes any argument on it.

Trial Examiner Norwood: I do not see yet just what is in that Commission's exhibit there that you wish to meet.

Mr. Leisure: Well, if Your Honor pleases, it is not entirely a question of that exhibit.

Since Mr. Wooden insists on precipitating this question now as to the activities of the Institute, I suppose we may as well go into it now as later.

Trial Examiner Norwood: Yes.

Mr. Leisure: Our position on that is that it does not lie in Mr. Wooden's judgment to determine what activities of the Institute he would determine are or are not material and relevant or what ones are or are not lawful. He has selected certain activities which he attempts to point out as being improper activities.

Now, it seems to me—

Trial Examiner Norwood: The complaint does that.

23963 Mr. Leisure: And the complaint has done so, also.

Now, it seems to me Mr. Wooden is not in a position to say, "I will object to anything that I have not already described as an improper activity."

The Government has charged The Cement Institute with having been a party to the alleged combination—

Trial Examiner Norwood: That is right.

Mr. Leisure: —concerning the prices and marketing methods of the manufacturing respondents in the proceedings. In an effort to establish such connection of the Institute the Government has stressed certain activities of the Institute.

Trial Examiner Norwood: Yes.

Mr. Leisure: And in addition has charged that The Cement Institute was the alter ego of the Code Authority for the present cement industry during the N.R.A.

In order to present our defense and to prove that The Cement Institute not only was not formed for the purposes set out by Mr. Wooden, and for the purposes of affecting or influencing the pricing and marketing methods of the members, but that it never undertook any improper activities for that purpose, if is necessary for us to show exactly what the activities of The Cement Institute were.

Mr. Wooden has put that in issue, namely, the 22964 activities of the Institute. That does not mean that we can be limited to the isolated instances referred to in the Government's evidence; but, on the contrary, it is incumbent upon us to show what the activities of the Institute really were in order that its purposes, objects, and accomplishments may be made clear on this record, and so that any unbiased and impartial tribunal may be convinced that the Institute was formed and was carried on for certain well defined and lawful and proper purposes.

Trial Examiner Norwood: Now, is there a charge here that it was formed for the sole purpose of engaging in these alleged illegal activities? Is that the charge?

Mr. Leisure: No. As bearing on that, the activities we want to show, are not illegal and improper in any way, and we want to show that these activities which we attempt to bring forward here explain and qualify and form the background before the activities which Mr. Wooden has seen fit to bring forth.

And in support of that I cite to Your Honor Mr. Justice Brandeis' opinion in the Chicago Board of Trade case; I also cite to Your Honor the Maple Flooring case; and I cite to Your Honor the Sugar Institute case.

Mr. Wooden cannot select—

Trial Examiner Norwood: Weren't they suits for dissolution where all the activities of these organiza-
23965 tions were in issue?

Mr. Leisure: Well, I do not know what the final effect of the cease and desist order may be on the Institute. As far as I know, that may be the final effect of the cease and desist order in this case.

I do not understand that Mr. Wooden can pick out certain activities of a body like the Institute and say, "We will go into these and will not go into any others." I am quite sure the authorities are all clear that we are obliged to come in and show that the activities of the Institute really were as bearing upon the case that he has seen fit to select.

Mr. Wooden: Your Honor, this proposed line of evidence is no more relevant than would be an attempt to show that The Cement Institute donated a thousand dollars a year to charity.

Trial Examiner Norwood: I think Counsel is right about that. I do.

Mr. Leisure: Well, the authorities, if Your Honor pleases—I have cited the cases in which the authorities have held exactly the opposite to Mr. Wooden's contention.

Trial Examiner Norwood: I let you put in here to complete the picture, and you may make a statement here about their entire activities, and we have the organic instrument of the Institute and its by-laws and all that
23966 to complete this picture; but I am not going to sit here and hear testimony as to other activities outside of the charges in the complaint, unless you can show me that they will throw some light directly, not remotely, on the activities charged and activities that have been testified to.

Mr. MacIntyre: If Your Honor please, let us refer to paragraph 7(h) of Count 1 in the complaint. There we have a charge as to certain activities of these Respondents, including The Cement Institute, relative to their efforts to stop the importation of foreign cement.

But under the four subsections of that subsection, tariff is not mentioned as one of the activities we have had taken up, but, instead, that of boycotting dealers who handled imported cement, that of spying on dealers, that of concerted and uniform deviations from the prices which would prevail at such centers under said pricing system if it was

not for the importation of foreign cement, and that of minimizing price competition among themselves in an effort to combat the importation of foreign cement; but tariff itself is not covered there in that paragraph. Activities to secure tariff, whether facts, alleged facts that they submitted to the Tariff Commission, were true or untrue, is not gone into in that paragraph.

23967 Trial Examiner Norwood: Well, now, I think that we have discussed some time ago, either on or off the record, the matter of the right of the citizen or the corporation, or anybody else to petition the Government as to changes of laws, and so forth, and that they had a right to do that.

There is no inference damaging to the Respondents that may be drawn from that exhibit, or any other exhibit relative to their lawful activities, relative to tariff committees, or anything else.

Mr. Wooden: Any such attempt would defeat itself. Nobody would attempt to do it.

Trial Examiner Norwood: I do not think that we should take the time to go into this thing about the activities of the Tariff Commission.

I shall sustain the objection.

Mr. Werle: Your Honor, before we do that, there is one further matter.

Respondents made motions to strike exhibits and parts of exhibits, testimony, and parts of testimony in this case. Those motions were taken before the Commission. Every one of the exhibits that refers to this Tariff Committee, the matter of activities on tariffs,—there was a motion to strike that exhibit or that part of that exhibit.

23968 The Commission did not strike any part of any of those exhibits.

Now, it seems to me in that connection that the Commission, therefore, has ruled in a sense that this is relevant and material to this case.

Trial Examiner Norwood: The Commission is simply not drawing any conclusions from any of these things as to irrelevant matters.

Mr. Leisure: Well, I want to point out, Your Honor, that in Your Honor's ruling there are two important questions involved. One is the question of whether or not we shall be allowed to go into other activities of the Institute, Mr. Wooden having put in evidence certain activities of the Institute.

Trial Examiner Norwood: Yes.

Mr. Leisure: That is one question, whether or not we shall be allowed to go into other activities of the Institute, Mr. Wooden having gone into some activities of the Institute, it being our contention, as I explained a moment ago, that we go into the other activities of the Institute for two reasons: First, as giving a background of the industry, and, second, as explaining and qualifying the activities which Mr. Wooden went into.

Now, the second thing involved in Your Honor's ruling is that Mr. Wooden has gone part way into the
23969 question of this tariff situation himself. He went into it over our objection. It is still in the record over our motion before the Commission. We moved to strike the exhibits as being irrelevant and immaterial. With all of that they are still here, and the issue of the activities of the Institute with respect to tariff matter is in this record, and it has been put in here by the Commission.

Now, I am offering now—

Trial Examiner Norwood: Do you think—

Mr. Leisure: —to go forward on this very issue.

Trial Examiner Norwood: Do you think that irrelevant evidence makes an issue in a case?

Mr. Werle: The Commission said it wasn't irrelevant. They denied our motion to strike on that ground.

Trial Examiner Norwood: No, they didn't say that. If a paper is admissible for any purpose, it shouldn't be struck, but that doesn't mean that you are going to pay attention to irrelevant parts of the paper. In a great many of those I limited the application.

Mr. Leisure: I have no way of knowing at this stage of the proceeding, when I am putting on my own case, to know what may be regarded as irrelevant and immaterial. In ordinary procedure, when a thing is irrelevant and immaterial, it is kept out of the record.

23970 Trial Examiner Norwood. Yes.

Mr. Leisure: And when there is no occasion for calling witnesses, but in a proceeding such as this has been, where the material which we say is irrelevant and immaterial has been allowed in over our objection, then if we are not allowed to meet it then we are deprived, it seems to me, of a fair trial.

Mr. MacIntyre: If Your Honor please, referring again

to this exhibit which has been the basis of a large part of this discussion, that is, Commission's Exhibit 844-K to N, Mr. Leisure has failed to call your attention to one portion of a paragraph there that is in that exhibit that relates to something entirely foreign from the tariff. Let me read that to Your Honor just to call your attention to it.

Mr. Leisure: There are a number of paragraphs I failed to call attention to.

Mr. MacIntyre: "Attention was called to the difficulties confronting the industry and the misconceptions in the minds of public officials, cement buyers, and others, particularly in regard to the difficulty of understanding a reason for f.o.b. destination prices, and the tendency for such prices to be uniform in the given destination."

There are other things in that set of minutes of
23971 the meeting of those two committees than tariff matters, and it is certainly relevant with respect to the other matters, and very material to the issues of the complaint, and merely that the tariff is mentioned at some point during the meeting doesn't invalidate everything with respect to the materiality of the issues in this complaint that took place at the meeting at the time.

Trial Examiner Norwood: Now, I want to make this statement here, that I am not going to receive testimony as to other activities outside of what is charged in the complaint unless they give rise to some direct references affecting those issues; that is, the issues raised by the complaint. If you can show me any connection, I think it is due me that you do show me before we waste time on going into these side issues.

Mr. McFadden: Your Honor, I think the difficulty is in interpreting what Your Honor and the Commission's Counsel and the Commission itself may believe to be directly connected or tending to lead to an inference. Now, our point, if I may complete my statement—

Trial Examiner Norwood: It is for the Counsel for the Respondents to show me. I want to know his purpose in introducing that, and I want him to show me that it has some connection and then it will come in.

Mr. McFadden: Then, if I may complete my
23972 statement on that—

Trial Examiner Norwood: Well, I have already made my ruling. Go ahead.

Mr. McFadden: I am asking permission to complete the statement I started.

Trial Examiner Norwood: Go ahead.

Mr. McFadden: Thank you.

I think this must be kept in mind; that some reference has been made to cases in the Supreme Court, and in many of those cases inferences are drawn as to the activities of a group or the purposes of an organization, unless they can show that they did not have the purposes that might be inferred from a selection of the evidence presented by the prosecution. So that if the Commission Counsel choose to include in the record what they call only the bad activities of the group, how is there any basis in the record for showing that there were, in fact, any good activities unless—

Trial Examiner Norwood: The question of whether there were any good activities is not in issue. That is the reason—

Mr. McFadden: I disagree with Your Honor as to the interpretation.

Trial Examiner Norwood: Well, we disagree. Go ahead. Proceed.

23973 Mr. Leisure: I want to be sure that the last question was asked in the record, and that the objection was made.

Trial Examiner Norwood: The last question was asked.

Mr. Leisure: Let me put this question, if I may, Your Honor, in order that I may get such a record.

Trial Examiner Norwood: Yes.

By Mr. Leisure:

Q. Do you recall what the purpose of the Tariff Committee was, Mr. Coogan?

Mr. Wooden: That is objected to, Your Honor, on the same grounds as previously stated.

Trial Examiner Norwood: I will let him state that on the idea of completing the picture, if it is not opening up an entire line of questions.

Mr. Wooden: I just wanted my objection in the picture, that is all.

Trial Examiner Norwood: Let him answer that. Objection overruled.

The Witness: May I have the question read?

(Question read.)

A. The purpose of the Tariff Committee of the Institute was to follow and handle all matters pertaining to the duties and importation of foreign cements. It had particular reference at that time to representation and
23974 presentation of our side of the case as to the reciprocal tariff agreements that were being instituted about that time.

Mr. Wooden: Your Honor, I move to strike the answer as wholly irrelevant and immaterial to the issues, and I think Counsel for Respondents ought to be asked to submit an offer of proof on this subject rather than—

Mr. Leisure: I don't think an offer of proof is necessary.

Your Honor, in referring to these exhibits, Mr. Wooden went into the fact that we did have a tariff committee. Now, here is a member of the tariff committee.

Trial Examiner Norwood: Yes.

Mr. Leisure: Who purports to tell us the purpose of it. Mr. Wooden went into it.

Trial Examiner Norwood: I have let him explain what that tariff committee is. Now, I don't think that any more—

Mr. Leisure: There was a motion to strike it.

Trial Examiner Norwood: —should be received on it. The motion is denied. I will leave the record as it is, but I think that we might as well consider that the subject is closed.

Mr. Leisure: Then, do I understand, Your Honor, that you will hear no further efforts with respect to the activities of the Institute in regard to tariff matters?

23975 Trial Examiner Norwood: You ask the questions and I will rule on them.

Mr. Leisure: I ask to have marked, for identification, a document I now hold in my hand, so that I may refer to it by number.

(The document referred to was thereupon marked for identification "Respondents' Exhibit 743.")

By Mr. Leisure:

Q. Mr. Coogan, I show you Respondents' Exhibit 743, for identification, and I will ask you if you can identify it.

A. Respondents' Exhibit 743 is a report of the tariff committee written by me as chairman and submitted to all members of the Institute. Unfortunately, it does not bear a date.

Q. When, Mr. Coogan?

A. Well, this report was probably written some time in the early part of 1935.

Mr. Leisure: I offer it in evidence (handing the exhibit referred to to Mr. Wooden).

Mr. Wooden: The offer is objected to, Your Honor, on the ground that it is irrelevant and immaterial, and for all the reasons previously stated in connection with this particular line of testimony.

Trial Examiner Norwood: For what purpose is this offered? How is this witness' report of the tariff committee meeting relevant to this case?

23976 Mr. Leisure: First, may I ask the witness:

By Mr. Leisure:

Q. Is this a correct report, Mr. Coogan, of the activities of the tariff committee, Respondents' Exhibit 743, for identification?

A. It is; yes, sir.

Mr. Leisure: If Your Honor please, the purpose of offering that is to show the activities of the tariff committee at that time. The witness' testimony would merely be oral, whereas this is a printed record of what took place and what they were doing at that time.

Trial Examiner Norwood: But how is the report or anything contained therein relevant to the issues?

Mr. Leisure: As to that I will have to make the same argument that Mr. Wooden made when he offered similar evidence with regard to the tariff committee. There is nothing mentioned in the complaint specifically about the activities of The Cement Institute with respect to tariff matters, but there is a catch-all phrase which says, "and other activities."

Trial Examiner Norwood: Yes.

Mr. Leisure: And Mr. Wooden under that phrase offered certain activities of the Institute in documentary form with respect to tariff matters, and I am offering it for the same reasons.

23977 Mr. Wooden: The other activities, Your Honor, were activities alleged with reference to restraint upon competition, and I offered no evidence that was intended to show the activities of this industry, or of the Respondents in regard to the promotion or imposition of a protective tariff.

Mr. Leisure: Now, Your Honor, you see that brings up the very question that I mentioned a moment ago. Mr. Wooden wants to decide now as this case goes along what is and what is not a restraint of trade. That is something that has to be decided later. He wants to decide that as he goes along, and if he thinks that this is not a restraint of trade, then he says it shouldn't go in, and I say that we have to have the activities of the Institute in evidence before we can decide whether it is a restraint of trade.

Mr. MacIntyre: That would be true—

Trial Examiner Norwood: The objection is sustained. If Counsel can show me at any time how that is relevant, why, I will take it, but he hasn't done so so far.

Mr. McFadden: May I suggest—

Trial Examiner Norwood: I have already ruled. There is no use of you making any more record. I am doing this, gentlemen, in an effort to save time and to save record.

23978 Mr. McFadden: I beg Your Honor's pardon. I thought that you had just asked us if we could suggest something, some relevant ground, that we were invited to do so, but I must have misunderstood.

Trial Examiner Norwood: Well, I have asked the Counsel here repeatedly this morning to show me how this tariff committee had anything to do with the issues and they haven't shown me yet. I will hear from Mr. McFadden.

Mr. McFadden: I am sorry for the misunderstanding. I thought that at the early part of this discussion Mr. MacIntyre pointed out that one of the reasons for offering one of the exhibits that was referred to was to show that The Cement Institute had taken over an activity of the P. C. A. Now, even though the particular activity were not the prime subject that the Commission Counsel were interested in at the time, the point is that he was trying to show a connection between the P. C. A. and the Institute, and we believe that to explain what the activity was will show that it was a very harmless connection from which no inference could be drawn with relation to the complaint.

Trial Examiner Norwood: I think you have shown that and I think that is in the record and there is nothing more than I can conceive of that can be added to it, and that is the reason why I am sustaining that objection.

Mr. McFadden: I see.

23979 Trial Examiner Norwood: Go ahead.

Mr. Leisure: It is our position, your Honor, that that exhibit which has been ruled out, Respondents' Exhibit 743, for identification, does help to explain and qualify the activities which have already been introduced in evidence by Commission's counsel, the activities of the Institute.

Trial Examiner Norwood: What is the number of that exhibit now? I have already made a statement there.

Mr. Leisure: 743 is the number.

Trial Examiner Norwood: I will restrict the application of this. In other words, that is in the nature of reversing a former ruling as to Commission's Exhibit 844-K to N in order to allay the fears of the Respondents. I shall limit the application of this and make it a condition of its reception to matters other than the references therein to the tariff committee.

Mr. MacIntyre: That is 844-K to N?

Trial Examiner Norwood: Yes, K to N.

Mr. Werle: That, your Honor, isn't the only Commission's exhibit in evidence that refers to that committee.

Trial Examiner Norwood: You may point out the others and assist me in it.

Mr. Werle: We will make an effort to do that.

Trial Examiner Norwood: And we will make you
22980 feel perfectly safe on that.

Mr. Werle: There are many others.

Trial Examiner Norwood: All right. Go ahead.

The witness identified Resp. Exs. 744 to 746, inclusive (also marked Com. Ex. 896 2A to 2C id.), as reports made by him as chairman of the tariff committee to the members of The Cement Institute during the months of February, March and April, 1935.

Q. What was your experience, Mr. Coögan, with respect to these hearings described in these exhibits?

Mr. Wooden: Your Honor, unless—

Trial Examiner Norwood: Wait a minute.

23981 Mr. Wooden: May I take a look at them?

Mr. Leisure: I offer them.

Trial Examiner Norwood: The exhibits aren't in evidence yet.

Mr. Leisure: Well, I thought if he told us about it it would make the background for their offer in evidence. I didn't want him to tell us what is in the exhibit.

Trial Examiner Norwood: Well, you make reference there to activities described in the exhibits. The exhibits are not in evidence yet.

Mr. Wooden: Well, I object to the question as calling for an answer regarding matters that are wholly irrelevant and immaterial, and they relate to the same subject about which we have been disputing for some time.

Trial Examiner Norwood: You mean you object to the receipt of the exhibits?

Mr. Wooden: He hasn't offered them yet. I object to the question that is now standing on the record.

Mr. Leisure: I offered them when I handed them to you.

Trial Examiner Norwood: He offered them.

Mr. Wooden: I object both to the exhibits and to the question.

Mr. Leisure: The purpose of the question—

Trial Examiner Norwood: Wait a minute.

23982 Mr. Leisure: —Your Honor, and the offer of the exhibits was to further demonstrate the activities of this witness and the tariff committee as one of the activities of The Cement Institute.

Trial Examiner Norwood: Objection sustained.

By Mr. Leisure:

Q. Mr. Coogan, I show you a document bearing date of April 9, 1935.

Mr. Leisure: First, I would like to have it marked for identification.

(The document referred to was thereupon marked "Respondents' Exhibit 747-A and 747-B," for identification.)

By Mr. Leisure:

Q. Mr. Coogan, Respondents' Exhibit 747-A and B, for identification, purports to show certain activities of the Tariff Committee of The Cement Institute as of April 9, 1935. Can you tell me what it is?

A. Respondents' Exhibit 747-A and B are the minutes of the meeting of the Tariff Committee of The Cement Institute held April 9, 1935.

Mr. Leisure: I offer it in evidence.

Mr. Wooden: The offer is objected to, your Honor, on the ground that it is irrelevant and immaterial and for other reasons stated in objection to this particular

23983 line of questioning.

Trial Examiner Norwood: You simply want there;

to show that there were other activities of the Institute besides the ones charged in the complaint; is that right?

Mr. Leisure: No, not simply that, Your Honor. I want to show what the activities of the Institute were as compared with what the Counsel for the Commission contended they were. This witness was chairman of—I don't know whether that is on the record or not.

By Mr. Leisure:

Q. Were you chairman of the Tariff Committee?

A. Yes, I was chairman of the Tariff Committee.

Mr. Leisure: This witness was chairman of that committee and is the person best qualified to tell us about its activities.

Trial Examiner Norwood: Yes. Well, the objection is sustained. I don't see why the Counsel must waste any further time going into that Tariff Committee matter. He has the benefit of his exceptions on that, and that benefit is just as much as if he had a carload of those papers here.

Mr. Leisure: If Your Honor pleases, a moment ago I made a statement to get a ruling as to whether we should go on, and Your Honor said to put the questions on it, and I am merely trying to follow those instructions.

23984 Trial Examiner Norwood: Yes.

Mr. Leisure: I would like to ask one further question before leaving Exhibit 747-A and B, for identification.

By Mr. Leisure:

Q. I would like to ask you whether or not, Mr. Coogan, it presents an accurate picture of the activities of your Tariff Committee during this period?

Mr. Wooden: The same objection, your Honor.

Trial Examiner Norwood: He can give that identifying material there to give the Respondents their full benefit of their exception.

Mr. Wooden: But if the main question is irrelevant so is this.

Mr. Leisure: We will have these marked as exhibits and considered at the same time in answering the question.

(The documents referred to were thereupon marked for identification "Respondents' Exhibits 748, 749-A, 749-B, and 749-C.")

Trial Examiner Norwood: Go ahead.

Mr. Leisure: There is a question pending.

A. The Exhibits 747-A and B, 748, 749-A, B, and C show the activities of the Tariff Committee, and with respect to gathering information for presentation in
23985 connection with the reciprocal treaties.

Mr. Leisure: I offer them in evidence also.

Mr. Wooden: They are all objected to, your Honor, as irrelevant and immaterial on the grounds previously stated, and, in addition, objection is made to Respondents' Exhibit 748, for identification, as being not the document of the committee but apparently some of Counsel's for the committee.

By Mr. Leisure:

Q. Well, Mr. Coogan, Respondents' Exhibit 748, for identification, do you recognize the signature?

A. I do.

Q. And when and under what circumstances—whose is it? Mr. Barnes?

A. Mr. Barnes.

Q. Under what circumstances was that letter signed by him?

A. Mr. Barnes signed that letter and sent it to me, addressed to the Tariff Committee with certain enclosures contained in the letter, asking for the gathering of certain information and relative to the reciprocal treaties.

Q. The point of my question was, why was Mr. Barnes writing you a letter at that time? Who was Mr. Barnes?

A. Mr. Barnes was Counsel for the Tariff Committee of The Cement Institute.

Trial Examiner Norwood: The objection is sus-
23986 tained; that is the objection as to its irrelevancy.

It doesn't appear to me—

Mr. Leisure: Now, in order to save a lot of time—

Trial Examiner Norwood: I refrained from making a general ruling here when the Counsel spoke to me awhile ago a general ruling that nothing relating to the Tariff Committee would be received. That is the reason why I told you to ask your questions, but I shall say now that anything on the order of these exhibits which we have ruled out need not be presented because I will exclude each and every one of them.

Mr. Leisure: Yes, that is what I was coming to. In order to save time, without going through any of these other questions with respect to the activities—

Trial Examiner Norwood: Yes.

Mr. Leisure: —of the Tariff Committee, as I understand it, without attempting to mark the other exhibits—

Trial Examiner Norwood: Yes.

Mr. Leisure: —and ask other questions along that line, it is Your Honor's ruling that we should not spend further time on offering any evidence as to the activities of that committee.

Trial Examiner Norwood: Yes. You can put those remaining documents, as you mentioned, in the form of a proffer stating that you have so many papers of a
23987 similar nature to the ones just objected to, and you can thus offer them.

Mr. Leisure: There are a number of questions that I wanted to ask him about, about their activities.

Trial Examiner Norwood: Yes, if they are similar—

Mr. Leisure: They are similar to the ones that I have asked.

Trial Examiner Norwood: Yes, containing nothing more relevant than those which appear, why—

Mr. Leisure: They are questions asking him about the activities of the Tariff Committee.

Trial Examiner Norwood: Yes. I am going to sustain an objection to each and every one of those.

Mr. Leisure: Then there is no need of taking time of offering them and asking them all on the record?

Trial Examiner Norwood: The object of the whole thing is to save time.

23988 By Mr. Leisure:

Q. Mr. Coogan, before we go on, the other day I asked you what you meant when you used the term "basing point," and you replied that at your mills you had, with one or two exceptions,—"We have a set price which we feel we would like to get."

I would like to have you explain how you determined this figure which you use as a base.

A. Well, theoretically, the base figure which we would set at our mills, if there were no other factors involved, would be a figure which would return to us a normal profit. However, there are so many other conditions in the commercial and competitive field that our base figures have not been set this way for many years, that I know of, and I doubt if we were ever able to put them on that basis.

Q. You also said that the prices at which the Alpha Portland Cement Company sells its cement are not in all cases made up of the lowest combination of some
23989 basing point plus the freight rate, and I think I asked you then whether or not there were many or few places where that occurred, and I think you gave the reference to Brooklyn at that time.

I would like to ask your now what the situation is, whether or not there are many places where the price of Alpha Portland cement is not made up of the lowest combination of some basing point plus freight, or whether there are only a few such places?

23990 A. There have been a great many such places where our destination prices were not made up on the bases of our mill figures plus freight rates.

23992 Q. Mr. Coogan, you also said that you figured that freight from the mill from which it was shipped.—I am now quoting your answer; you say:

"Of course in the time that we were using that form there was practically only one basing point, because as soon as we started using some basing point we naturally went almost entirely to delivered price."

Then you also said:

"We used the Lehigh Valley as a basing point later on. The use of the Lehigh Valley as a basing point was not in use by us until some time along about 1910 or 1911."

I would like to ask you now which of those answers is correct, Mr. Coogan? Did you use a basing point at the Lehigh Valley price prior to 1910, or did you only begin to use a basing point at or about 1910 or 1911?

A. No; we used a basing point beginning in 1903. And I think I have already shown invoices where we billed our shipments at delivered prices.

Now, at that time we had only one mill, and, of course, all the freight was figured from that mill. Our mills were located in Alpha, N. J., and we started using a basing point using only the Lehigh Valley base as early as 1903.

Q. In connection with the identification of the quotation of a competitor, you stated that some of them were
23993 brought in by your salesmen, and then you said:—quoting: "Some were mailed indirectly by the people whose names are shown on the quotations."

What did you mean by that some had been mailed to you by the people whose names appeared on the quotation?

A. I mean, that they were mailed into us by the dealers to whom they had been addressed by our competitors and not mailed to us by our competitors.

Q. You also stated, on page 23257 of the record, Mr. Coogan, and under the heading of specific job contracts: "They have a fixed price; that is, which have a fixed top price, not a fixed low price."

I want to ask you before going on to explain what you mean when you say your specific job contracts have a fixed top price.

A. I referred to those prices as maximum stated prices which were subject to reductions in the event the market price declined.

23994 Q. In connection with your testimony concerning dual bases, Mr. Coogan,—and at page 23284, Mr. MacIntyre, of the record,—you stated that you were using your Ironton mill as a dual base at the present time, and then you also stated you had discontinued the use of that dual base.

Will you please explain for the record what the fact is? Are you using it today or are you not using it today?

A. We are using the dual base at our Ironton plant today, and have been using it since, I think, about '32 or '33. There was a time that for a short time that we didn't use it, but we started in shortly after that to using it and have been using it ever since.

Q. On page 23287 of the record, you were asked about your dual base at St. Louis, and in stating the circumstances under which you discontinued the use of that base, you said in part: "Now, the reason it was discontinued is because we had a very large decrease in our prices for that mill; in fact—" and then you go on with another discussion which is not addressed to the question.

Will you state just what the circumstances were so the record will be clear as to your reasons for discontinuing that dual base?

A. We had a dual base at our Alpha-Missouri mill in which we used a 10-cent lower figure for computing our prices in St. Louis, and St. Louis County, than that
23995 used outside of that territory. We then came to the point where for competitive reasons we were compelled to reduce our prices, and that reduction, as I remember it, amounted to 30 cents a barrel, and instead of reducing both bases 30 cents a barrel we reduced the

higher bases 50 cents per barrel, and then continued using the one base for both—for points both in the county and outside of that territory.

Q. On page 23458, Mr. Coogan, I asked you what the circumstances were under which you began to use the clause in the specific job contracts giving the customer the benefit of the decline in price, and you replied that you were forced to do so by action of your competitors. I neglected to ask you what you meant by "being forced to do so by action of your competitors." Will you explain what you meant by that answer?

A. Well, the policy of our competitors in granting to their customers a decline clause was clearly more favorable to the customer than our policy of not doing that, so that in order to meet the basis of competition which was established by our competitors we were forced to adopt the decline clause.

Q. On page 23474—this is the last one I have, Mr. MacIntyre—I asked you a question, whether between the first of August, when the Laurence Company made the change that you had referred to on August 17, when the Lehigh announcement came out, did you discuss the matter of discounts with any representatives of the Lehigh
23096 Company. And then you said, "No, sir; I did not. We did after the Laurence quotation appeared in the field. Our terms before that had been 10 cents," and so on.

Did you in that answer mean to contradict the statement you made in the first portion to the effect that there had been no discussion of the matters? In other words, was your explanation of both of those matters contained in the same answer?

A. After the Laurence quotations were in the field, we had no discussions of any kind with any of our competitors. Now, we did discuss this matter within our own organization in an effort to try to work out some method of enabling us to meet that competition.

23097 Q. Mr. Coogan, did you have anything to do with—I didn't ask you the qualifying question—did you have anything to do with that Commission's Exhibit 85-2A?

A. Well, this is a letter from the general manager of The Cement Institute addressed to three members of the Tariff Committee, who had been working on the matter of

filing a protest with the committee for reciprocal information.

Q. Did you have anything to do with it" was my question, Mr. Coogan, or what circumstances in respect to it was called to your attention at that time, if any?

A. Well, I did have something to do with it because I was one of the people that helped to prepare the
23998 draft which was enclosed with this letter, and this letter was sent out at my request.

Q. Sent out to whom?

A. It was sent out to the other members in order to get any suggestions that we could as to what to include in our draft for a protest for the Committee on Reciprocal Information.

24002 Q. Now, I want to call your attention to a Commission exhibit, which is Exhibit 617-A to E, which appears to be the minutes of the Institute
24003 trustees meeting of January 11, 1934, and it further provides that you and Mr. Boen, of the Lehigh Company, were appointed to cooperate with the Institute on tax matters; it also shows that your and Mr. Boen had been, prior to that time, representing the Institute in connection with paper sacks.

Did this committee that you have just been describing have to do with both paper and cloth sacks?

A. Yes, sir; both paper and cloth.

Q. What, Mr. Coogan, had you and Mr. Boen to do, or what you had been doing as representatives of the Institute in this respect?

A. That committee was appointed and became active at a time that the processing taxes on cotton were instituted by the Government. We appeared before the bodies in Washington and produced the leasing arrangements which had been used by the various cement companies for many years past, and we were able to convince the departments that so far as the cotton bags in the cement industry were concerned they were not sold; that they were leased. And finally it was decreed that there should be no processing tax on cotton entering into the manufacture of cloth for cotton bags.

Then after that there was a compensatory tax on paper declared, because the cotton bag manufacturers claimed that there had been a shift from cotton to paper
24004 bags, and they wanted this compensatory tax placed on paper, with the result that there was a compensa-

tory tax placed on paper bags, which became effective on December 1, 1933. And after much argument and many appearances we were able to have that tax discontinued, about June of 1934.

Then we assisted the members of the industry to prepare and present to the proper authorities, claims for refunds of floor stock taxes which had been paid by them on December 1, 1933, and also claims for the refunds of the stocks on hand of June, 1934. We attempted to collect the tax that had been paid in the meantime on paper bags, but due to the fact that that tax was paid by the paper bag manufacturers and was passed on to the cement companies with the invoices for the paper bags, we were not able to collect that, but we did collect for the floor stocks and assisted the members in the proper preparation of their claims.

24006 Q. I wish to call your attention at this time, Mr. Coogan, to another Commission exhibit, which bears the number 598-A to L. This Commission exhibit appears to be a meeting of July 10, 1934, and it discusses the same subject that we have been discussing, the bag taxes and these processing taxes on July 12, 1934.

Are these the taxes which were canceled, which you told us about a month ago, as well as the ones that are referred to in the previous exhibit (handing a document to the witness)?

A. Yes. This exhibit has reference to—some reference to tariff matters, but more reference to the processing and compensatory tax on paper and cloth bags.

Q. Yes, but the point of my question was: You told us about some taxes that were canceled as a result of your activity, the activity of the tax committee. I am asking you if the taxes referred to therein are the ones that were canceled.

A. Yes. This states that the taxes were canceled as of June 12, 1934.

Q. What has been your experience as a manufacturer and as a member of this committee? Have you had occasion to take up the question of taxes on your floor stocks? What is your experience as to that?

A. Yes. We took up the question of taxes on our floor stock after the compensatory—after we had succeeded

in having the compensatory tax wiped out. Then
24007 we began to work on getting the refund of the floor stocks which we had paid to the Government on bags on hand when the tax went into effect and also those on hand at the time the compensatory tax was canceled.

Q. I included both your company and this committee in that question, and you answered by saying, "We" did certain things. Whom do you refer to?

A. I mean the committee. There were only two on the committee, as I remember. That matter was handled by Mr. Boen and myself.

Mr. Wooden: Your Honor, I am perfectly willing to agree here and now that no reference will ever be made to the activities of this so-called bag tax committee, or whatever it was.

Trial Examiner Norwood: In other words, you admit that there is no illegality attaching, or the Government does not contend that there is anything illegal about this?

Mr. Wooden: We will never contend it.

Trial Examiner Norwood: These Respondents' activities through its tax committee and also through its tariff committee?

Mr. Wooden: Yes.

25008 Mr. MacIntyre: That is, the committee that was acting to secure refunds or invalidation of taxes on bags.

Trial Examiner Norwood: Yes.

24012 By Mr. Leisure:

Q. From your own viewpoint as a manufacturer, Mr. Coogan,—first, let me ask you what your actual observation was and what your experience was as to whether or not this committee resulted in saving any sums of money for your company?

A. Yes, this committee, due to the fact that they were able to have no processing tax levied on cotton entering into the manufacture of cotton bags, saved our own company and the industry many thousands of dollars. The refund of the compensatory taxes on paper bags based on about what we got back from the Government must have amounted to something in the neighborhood of four to five thousand dollars.

Q. Let me call your attention to another Commis-

sion exhibit, 617-A to E, Mr. Coogan. This exhibit
24013 appears to be minutes of a trustees' meeting of January 11, 1934, and it shows you as a member of the local materials committee of The Cement Institute beginning in January, 1934. What were your duties as described in this exhibit, Mr. Coogan?

Mr. Paulson: That question, Your Honor, is not apt to bring forth an answer that could add anything to this record. It said, "What were your duties as described in that exhibit?" That would call for a reading of the exhibit. I object to the question.

By Mr. Leisure:

Q. Well, I, of course, have reference not as to the duties that are described in the exhibit but you are portrayed in the exhibit as holding a position there, as I pointed out in my question, and I wanted to know what your duties were in the position that you are portrayed in the exhibit.

A. At that time our company, and, I think, the whole industry, were having considerable trouble with certain relations of the P. W. A. respecting the use of local materials, and some interpretations which had been issued by them in October, 1933. Not only was this question of States' barriers brought up by the P. W. A., but it was also being enforced by some State governing bodies, and we felt that it was to the detriment of our own company
as well as to the industry and business in general to
24014 build up any State barriers for the purchases of materials, and at this meeting there was a committee appointed who handled the matter of properly presenting this matter before the various State authorities as well as the federal authorities at Washington.

Q. I am not sure I understand you, Mr. Coogan. Do you mean that the matter was opposed as an industry problem rather than as an individual company problem or vice versa?

A. We opposed it—it was opposed as an industry matter and we opposed it as an individual matter.

Q. Do you know what the reason was for the industry's opposition to the restriction to use the local material?

A. Well, the industry's opposition to the use of local materials was the fact that it tended to build up favoritism and led to many abuses in the distribution of their business.

Q. Were those the restrictions that you tried to stop?

A. Yes, sir; we did. We did everything we could to stop them.

Q. Now, from the standpoint of your own company, what was your observation as to these activities with respect to it?

24015 A. There were some places where the application of such a rule would help us; there were other cases where it might harm us. It would depend entirely on how the law or rulings were interpreted and put into force, but I should say that in some cases it might help us; in other cases it might harm us.

Q. Were the things that you have described the only activities of your committee?

A. Yes, that was the sole activity of that committee.

Q. There has been considerable testimony in the record, and I wish to direct your attention to certain testimony concerning P. W. A. projects, and ask you whether or not any of these restrictions applied to those and whether or not your committee had any activity with respect to that.

A. Yes; these activities referred to regulations and interpretations that had been issued by the P. W. A. in respect to the use of local materials.

Q. There is in evidence here, Mr. Coogan, a copy of the N. R. A. Code, and I note in Article VII of that code the subject matter of new plants is discussed. Do you know anything about such committee in the Code?

A. Yes, I was a member of the committee appointed under the Code which—to which was referred the matter of handling those provisions of the Code.

Q. What was the necessity for such a committee,

24016 Mr. Coogan, if you know?

A. Have you got a copy of the Code?

Q. The Code? Yes.

While we are looking for that, Mr. Coogan, I will ask you some more questions to save time, if I may: Do you know, was there any power given to The Cement Institute, or any committee under the N. R. A. Code to prevent the erection of new cement plants and to prevent enlargement of existing plants?

24017 Q. Suppose I divide it in two, Mr. Coogan, and take, first, The Cement Institute.

First, let me ask you, was any power given to The Ce-

ment Institute to prevent the erection of new cement plants?

A. No.

Q. Or to prevent the enlargement of existing plants?

A. No, none whatever.

Q. Was any given to the N. R. A. Code?

A. No.

Q. The N. R. A. Code Committee?

A. There was no power given to the N. R. A. Code or Code Authority to prevent the erection or enlargement of any plants. There was a provision in the Code by which they were to present full facts and information as to the erection or enlargement of new plants, and after all of that material had been properly presented it was submitted to the President for a final decision in each case.

Trial Examiner Norwood: Didn't it go to an enforcement body in case the plant was unjustified?

The Witness: No. I think, according to my mem-
24018 ory, you had to get a decision. I think the President had the final say in that, as I remember that provision of the Code.

Q. First, was there a committee on new plants of The Cement Institute? Did your have such a committee?

24019 Q. Was there such a committee?

Trial Examiner Norwood: Let him clarify that.

A. Well, I don't know that that was a committee of The Cement Institute, or there was a committee that acted under the provisions of the Code.

Q. It acted under authority of the Code?

A. Yes, sir.

Q. Did it have any meetings?

A. I think the committee had a few meetings.

Trial Examiner Norwood: Well, was that a Code Committee or an Institute committee?

The Witness: It was a Code committee.

By Mr. Leisure:

Q. Did you have any meetings, did you say?

A. Yes, we had two or three meetings. There was only one case, as I remember it, that came up during the life of that committee, and that was in the case of a plant that was projected in the Lehigh Valley about that time.

Q. What plant?

A. The National Portland Cement Company. We gathered all of the facts as to the production and the consump-

tion, and the demand for cement from that field and presented all of that information to the N. R. A. and no action was ever taken with regard to the erection of the plant. The plant was completed and put in operation and still continues in operation.

24020 Q. Who was the protest presented to?

A. Well, as I remember it, we presented it to the N. R. A., but my own impression is that it finally goes to the President of the United States.

Q. Was any action taken?

A. No, there was no action taken and the plant was erected.

Q. I would like to call your attention to another Commission exhibit, Mr. Coogan. This exhibit is dated January 8, 1934. It is Commission's Exhibit 812-S. It is a letter from Mr. Young, of the Lehigh Company, to Mr. Conn, and it appears at the bottom that the letter was sent to you. Summarizing, it shows that Mr. Kanengeiser of the Superior Company had called the attention of the Code Authority to the fact that a new cement plant was being contemplated in Lawrence County, Ohio (handing the exhibit referred to to the witness).

Did your committee take any action as to that situation, Mr. Coogan; and if so, what?

A. Yes, there was action taken by our committee in connection with this plant which was being promoted in Lawrence County, Ohio, and the proper drafts were prepared and the petition presented to the President according to this letter.

Q. What happened? Did the plant go on, or what happened?

A. No, no. I don't think that plant ever got beyond the rankest promotional stages. I don't think that it was ever a really very serious matter.

24021 Q. Now, will you look at Commission's Exhibit 942-B and C? They purport to be telegrams between Mr. Burnett of the Monolith Company and you, dated September 30 and October 1, 1935. Do those refer to any action of your committee, and, if so, will you tell us what (handing the exhibits referred to to the witness)?

A. No, and this telegram was received by me, the new plants committee, which was provided for in our Code being no longer in existence, and we were not acting as a committee. I handled this matter in a purely personal way.

Q. And what did you do?

A. I referred it to the then president of The Cement Institute and wired Mr. Burnett to that effect.

Q. Mr. Coogan, just as quickly as you can and briefly, can you tell us what action was taken with respect to that proposed loan represented by those exhibits (handing papers to the witness)?

A. When I received this telegram, I referred it to Mr. Coffin, who was then president of The Cement Institute, and he telephoned to me that he was going to wire
24022 a protest to the R. F. C. against this loan being made to this company, who contemplated rehabilitating a plant at Forman, Ark.

Q. Was the R. F. C. loan made to the Forman plant?

A. No, the R. F. C. loan was never made in that case.

Q. Did you take any action with respect to the enlargement of any existing plants as provided for in the N. R. A. Code?

A. No, there was no action taken on any enlargement to the best of my knowledge.

Q. Did you at any time during your experience, then, just as briefly as you can, prevent the construction of or the enlargement of any cement plants; if so, what was done?

A. None that I know of. We protested as in the case of this Arkansas plant, and the loan was not made by the R. F. C.

Q. Now, Mr. Coogan, coming to a new subject matter, I wish to call your attention to Commission's Ex-
24023 hibit 3196, and I am now referring to a document here which we may refer to as the North American license agreement. Are you familiar with the circumstances that led up to the making of that agreement, Mr. Coogan?

A. Yes, sir; I am.

Q. Now, just as briefly as you can, tell us what they were?

Trial Examiner Norwood: What exhibit is that?

Mr. Leisure: That is Exhibit, Your Honor, 2196.

Trial Examiner Norwood: Commission's?

Mr. Leisure: Commission's Exhibit; yes, sir.

Trial Examiner Norwood: All right.

Mr. Leisure: And it is the North American license agreement. I am asking him to explain the circumstances under which that agreement was entered into.

Trial Examiner Norwood: Yes.

A. In 1902 the Alpha Company purchased the plant of the Martins Creek Portland Cement Company, and shortly thereafter we found that there was a suit pending or had been instituted in the meantime against the Martins Creek Portland Cement Company for the infringement of a patented process called the Harry & Seaman patent, which was a device for burning pulverized fuel in the rotary kilns. Prior to about that time most of the cement companies had been using oil in the burning of their clinker, but they were forced to go to coal on account of it being so much cheaper, and at that time a good many of
24024 the companies started using a device which the Atlas Portland Cement Company claimed infringed the Harry & Seaman patent.

The case was bitterly fought, testimony was taken in this country as well as abroad, and for several years the Alpha Company continued in defense of this litigation. They were joined by four other companies, the Lehigh Company, the Vulcanite Company, the Lawrence Company, and the American Company, who joined with the Alpha Company in helping them to defend this case.

In about 1906 a settlement was reached whereby the suit for infringement was withdrawn. There was a company set up which was to build this, as well as any other patents that they might have, and the Atlas Company were to be paid a royalty of $200,000 a year for the use of this particular patent, and all of the companies who were members of this new company were to pay a royalty, including the Atlas Company.

It was the intention of the holders of that patent to erect new plants in territories where new production was needed, and that by having this holding company that it would mean that perhaps fewer plants might be erected in the territories where there might be need for new production. And then shortly after that there was a decision in the Rubber Tire case which gave to the holders of processing patents a right to control prices, terms, and policies of materials manufactured with a patented process. The
24025 company then holding the patents thought that that gave them a very great value, and they decided to license other manufacturers, which they did in the northern section of the United States, and they provided prices, terms, and policies under which cement manufactured

under that patented process were to be sold. This continued, I think, until the latter part of 1910.

In the meantime the Sandusky Cement Company, an Ohio company, litigated the validity of the patent and there were other decisions. In fact, in that case a decision was handed down favorable to the Sandusky Company, and after which time the whole license matter was dropped and the company went out of existence.

Q. Now, with respect to your answer, Mr. Coogan,—and I noticed you said that licenses were given to manufacturers in the Northeast to manufacture under the patents,—do I understand that to mean that all manufacturers in the Northeast were manufacturing under this patent, or certain designated companies?

A. No. As I remember it, there were several manufacturers who did not take out a license under this agreement.

Q. May I see that exhibit just one second?

(The witness hands the exhibit to Mr. Leisure.)

Q. I notice here in this exhibit, this licensing agreement, Commission's Exhibit 3196, that the agreement fixed the price of cement for the licensees provided that all
24026 prices should be delivered prices.

Do you know anything about that provision in the agreement, Mr. Coogan?

A. Well, the license agreement simply followed out the practices that were in effect in the industry at that time, and inasmuch as most of the quotations were made on a delivered basis, they were simply continued on the same basis so as to make as little disruption in the business as possible.

24027 Q. Mr. Coogan, let me put another question as to this agreement:

At the time you entered into it, do you recall whether any consideration was given as to mill prices instead of destination prices?

24028 A. No. As I remember it, the general going practice in the industry at that time was to use destination prices, and in order to make as little change in the business as possible that was continued.

24030 Q. Now, did you intend the license agreements to have any effect on the prices of those companies which were not parties to it, Mr. Coogan?

A. No, we did not.

Q. Did you observe as of that time whether or not it did have any such effect?

A. No, I don't think it had any effect on their prices, from the way I found them in the field.

Q. Now, take your own company. Did the provisions for the use of delivered prices have any substantial effect on your price policy at that time?

A. No, I don't think it had any substantial effect on our price policy, because it simply followed the policy which we had been following prior to the adoption of the license agreement. We followed it during the agreement and subsequent to the agreement.

Q. What about basing points? Did it have any effect on the Alpha Company's use of basing points in quoting delivered prices?

24031 A. No, I don't think it had any effect on basing points, because the matter of basing points had been pretty clearly established in the industry prior to the Code.

Now, you will notice, of course, that years after the Code the number of basing points, due to new production and new mills, was very greatly increased, but I don't think that in so far as the license agreement, in and of itself, had any effect on the matter of basing points.

Q. Mr. Coogan, you have just used the word "Code" in your answer. Did you mean license agreements?

A. I meant license agreements, yes.

Q. Now, there is another thing in this license agreement, Commission's Exhibit 3196, a schedule of discounts was provided of 5 cents a barrel to dealers and 10 cents a barrel to distributors.

What had been the practice, Mr. Coogan, as to the scale of discounts followed in the industry at the time this license agreement was adopted?

A. Well, to the companies who maintained distributors, and in one or two cases where our company had distributors, we gave the distributor a discount of 10 cents per barrel, and in quoting to dealers about that time on most of the work we gave them 5 cents a barrel dealers' discount.

Q. In the same exhibit there is another provision for a discount of 1 cent per barrel for cash within 10

24032 days from date of shipment.

What was the practice after the expiration of this agreement?

A. Well, there had always been a cash discount for

payment within a stated period since 1897 in our own company, and that continued up until the time of the license agreement, continued during the license agreement, and subsequent thereto, except that the amount of the discount per barrel has been changed from time to time.

24033 Q. Now, Mr. Coogan, I notice also that this license agreement provides that all quotations are to be for periods not exceeding 15 days deliverable within 30 days after acceptance.

Do you know whether or not that was a new provision at that time?

A. No, that was not a new provision. There was always a limitation on the acceptance time that our quotations would be left open. Now, since the license agreement that time has been changed from—on different occasions. I don't know exactly what the changes are, but there have been many changes as to the time of acceptance.

Q. Do you know, Mr. Coogan, offhand—can you tell me whether this license agreement—there has been considerable discussion here as to what has been known as the old Cement Case. Do you know whether this license agreement was in that case or not?

A. Yes. I am sure that the license agreement was presented in the old case.

Q. Let me ask you this: After the license agreement was terminated on January 1, 1911, as you have described, what was your experience and observation? Was the agreement continued or followed, or did it affect

24034 your subsequent practice in any way?

A. No. The license agreement was entirely dropped on January 1, 1911, and after that time it had no effect whatever on our policies.

Q. Now, there has been testimony prior to yours, Mr. Coogan,—the witness that preceded you testified about certain pricing policies of your company on commercial business.

I would like to ask you what your policy is concerning prices on public works, public business.

A. Well, when quoting on public work, with a few exceptions, we simply follow and quote the same prices that we are quoting to our commercial customers at that same time and at that same destination.

Now, the exceptions being in the case of a sale to the Government where land-grant rates are involved. We

have been quoting a destination cost in order to give the Government the benefit of the land-grant rates.

Then there have been two or three occasions that I recall where our company—some of it was during the Code and some was not during the Code—where we have quoted to public bodies prices different from what we were quoting to our commercial customers at that time.

Q. Well, I am not clear, Mr. Coogan. What I want to know is, have you ever sold to a governmental agency at a price higher than your market price on commercial
24035 business at the same time and place?

A. No, sir, I don't think that has ever occurred.

Q. And what about selling them lower? Have you ever sold a governmental agency lower than your commercial market price at the same time and place?

A. Yes; there have been two or three occasions when we have sold the Government, and in one case a State body.

Q. Have you any of those in mind?

A. Well, some of them were during the Code period. I think the T. V. A. was one. The Tigert Valley Reservoir at Grafton, W. Va., was another. That was also during the Code period. There was one in the State of Illinois in 1932 where we quoted a price to the State different from what we were currently quoting to our commercial customers.

Q. Has the Federal Government, or any other public body, for that matter, ever demanded special treatment in any way of price consideration of your company?

A. Well, they have often requested it. As far as demanding is concerned, of course almost every customer feels that when he is purchasing cement he is entitled to some special consideration, which we have uniformly declined to give, except in some few cases where he felt it was wise for competitive and commercial reasons to do otherwise.

Q. What has been the policy and attitude of your company with respect to any such requests by the Gov-
24036 ernment? Is it your attitude and policy that the Federal Government is or is not entitled to special prices?

A. Well, our company and myself personally don't think they are entitled to any special prices.

Q. Does that apply also to State Government bodies?

A. It does; yes, sir.

Q. Do you know, Mr. Coogan, when you sell to a dealer whether or not the cement that the dealer takes goes into private construction or construction financed out of public funds?

A. No. We keep no records of that. It undoubtedly goes into both kinds of work.

Q. Well, what have you to say, if anything, with respect to your sales expenses in connection with sales to the Government. Are they greater or less than the sales expenses in connection with your sales on commercial business?

A. Our company makes no effort to segregate the cost of selling any particular line of business. We take our entire sales cost, divide it by the number of barrels shipped, and that gives us our sales expense per barrel. If we were to attempt to differentiate on sales cost as to the expense of getting different business, it would mean that our large dealers handling one or two hundred cars of cement a year would probably show a little less expense than his competitive dealer who might be handling five to ten cars a year.

24037 Q. From what you have just said, do you or do you not favor the large quantity buyer over the small quantity buyer?

A. We do not. We have never made a quantity discount.

I think I referred early in my examination to one time in the early history of the industry where jobs of a certain size were quoted direct, but that we only followed for a short time, but outside of that we have never observed a quantity discount.

Q. You mentioned some kind of quantity differential. What did you mean? What was it?

A. Well, the quantity differential is the one that I referred to when I said that we, in the early history, quoted on jobs of a certain size direct and all other jobs we quoted through our dealers. That is what I referred to as a quantity differential.

Q. You say you did at one time. What were your reasons for continuing it or abandoning it? Will you explain what you did, please?

A. Well, our buyers soon learned that in presenting their request for prices they made the quantities on all

jobs, regardless of the quantity required—they made it a figure higher than the minimum which we had set, in an attempt to get us to quote them directly on all business of any size and to take that business away from the dealers to whom it rightfully belonged.

24038 Q. Now, during the direct case, Mr. Coogan, it was intimated by some of the Commission witnesses that there was some advantage in selling to the Government because of their paying cash. What has been your experience with regard to that? Is there any advantage in sales to the Government because of the fact that the Government pays cash?

A. Well, the Government doesn't pay cash any more than ninety-nine and ninety-nine one-hundredths of our customers do. Our credit losses are very small, and I certainly don't think that they are entitled to any consideration because they pay for the cement because all the cement we ship we expect to get paid for at the time we ship it. There is an occasion, which is not very often, when we do lose a little money or an account, but ordinarily we collect the money that is due us.

Q. Mr. Coogan, has your company frequently bid on public lettings for Government and State work?

24039 A. Yes, sir; we have.

Q. What is the machinery used by your company for handling this type of bidding; I mean, from the geographical standpoint?

A. Well, ordinarily, when those inquiries come to our office, unless there is something very particular about the size or as to the delivery or specifications or something else, they are handled in an entirely routine way and don't come to the attention of anybody except the routine sales office employees, unless there is something special to be considered. Now, in the case of our eastern office, we handle all of the inquiries there in the northeastern section of the United States, and also unless there is some particular question, I don't see those inquiries until they come to me for signature after the bids have been prepared.

In the southern district the bids are made up at our Birmingham office. That covers the southeastern and Gulf section, in charge of Mr. Postelle, and in the Chicago office, they are made up under the direction of our western sales manager, Mr. Fellows.

Q. Well, now, suppose we consider for a moment those that you have described as coming under your attention in the eastern office, and those that are directly under your supervision. What is the procedure of your office in making up those bids?

A. Well, they are handled just like any other
24040 commercial inquiry. In the case of the bids handled at the eastern office, there is no territory involved where land-grant rates apply except when we come to quote on the annual Navy requirements, where they include their yard at Pensacola and Warrington, as well as yards at other points in the United States, and we get the information relative to the land-grant rates from our Birmingham office, but we include that in with our bid from the eastern office.

Q. Then have you explained fully, Mr. Coogan, the procedure when a bid is received at Easton, for instance?

A. Well, when a bid is received there, it simply goes to the Chief Clerk of the Sales Department, who assigns the proper man in the sales department to fill in our prices and other information, and unless there is something about the quantity involved, or the specifications, it is simply filled in in the same way we fill in all our other commercial quotations, and after that work is done it comes to me for signature.

Q. Let me call your attention to a Commission exhibit, 102. This exhibit relates to bids taken by U. S. Engineers at Memphis on June 7, 1934, and it shows that your company did not submit any bid on this job. Can you tell us why you did not bid on that job, (handing the witness the exhibit referred to)?

24041 Q. Is that in a district or geographical location where your company does bid, Mr. Coogan?

A. It is; yes, sir.

Mr. Wooden: All right.

By Mr. Leisure:

Q. Will you tell us, then, why you didn't bid on this job?

A. We, of course, give instructions to our branch offices at Chicago, Birmingham, and other places as to how to handle any particular or special question which might come up in connection with a bid, and at this particular case we told our people not to submit any bid on it for

the reason that some time before there had been some bids opened and we felt that we were not in position to compete with the mill located on the Mississippi
24042 River, who had been given the previous business of this kind, and, therefore, we did not submit any bid.

Q. Did you have any correspondence or discussion with any of your competitors as to this bid before deciding that you would not bid?

A. No, sir; I did not.

Q. Let me call your attention to another Commission's exhibit, Mr. Coogan. I have reference to Exhibit 303-D, which relates to bids taken at the Fort Meade on September 8, 1936. This exhibit shows that it is an invitation to bid on 332 barrels of cement, and that you bid a price of $2.30 in paper delivered at Fort Meade, Md. Under the procedure that you have described what happened with respect to that bid, do you know? Was it brought up to you in advance, or was that one of your routine bids that you have told us about?

A. A bid of that kind would be a routine bid and would be handled without having been brought to my particular attention. It was handled just the same as we would handle a commercial inquiry from that same point.

Q. Do you know how at this time that price of $2.30 that you quoted in that bid was determined?

A. No, except that so far as we are concerned that was the same price we were quoting our commercial customers at that time and place.

24043 Q. Did you have any communications of any kind with any of your competitors as to this bid before you put it in?

A. No, sir; I did not.

Trial Examiner Norwood: Had you picked up any prices that indicated to you what you should bid to meet competition there?

The Witness: Only what we had previously found in the field near Fort Meade, and we simply quoted on the same basis that we were quoting our other commercial customers.

By Mr. Leisure:

Q. Now, let me refer you to Commission's Exhibits 164 to 169; 164 runs from A to 2D. These exhibits deal with bids submitted by various cement companies at Fort Peck in 1934 and 1935, and they show that bids were opened on

May 10th and June 5, 1934, and on June 10th and July 23, 1935. Will you please look at these bids and tell us whether or not your company bid on these lettings (handing the exhibits referred to to the witness)?

A. Well, I am sure that our company quoted only on the first inquiry on which I think bids were opened May 10, 1934.

24044 Q. Mr. Coogan, I show you Respondents' Exhibit 751-A and B, for identification, and ask you to identify it, if you can.

A. Respondents' Exhibit 751-A is a letter dated April 12, 1934, from our Chicago office, sales manager, Mr. Fellows, and addressed to our general sales manager at Easton.

Q. I notice some figures on the side. Do you know whose figures those are?

A. Yes, sir; those are my figures.

Q. What are they?

A. Well, they are simple computations figuring up destination cost to the United States Government.

24045 (RESP. EX. 751-A and 751-B was offered and received in evidence.)

24046 Washington, D. C.,
September 27, 1939.

24047 F. M. COOGAN thereupon resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Leisure.

The witness identified Resp. Ex. 752 as a copy of a letter dated April 23, 1934, from Alpha's general sales manager at Easton to its Chicago sales manager, Mr. Fellows.

24048 Q. Now, that letter indicates that you would go to Chicago to discuss the bid with Mr. Fellows. What are the facts, Mr. Coogan? Did you go?

A. Yes, I was in Chicago shortly prior to the date for the submission of those bids, which was May 10th, and took the matter up verbally with Mr. Fellows at that time.

Q. Was that during the Cod period, Mr. Coogan?

A. Yes.

(RESP. EX. 752 was offered and received in evidence.)

24049 Q. Mr. Coogan, does that letter indicate in any way as to what price you would bid?

A. No, this does not indicate what price we would bid.

Q. Had there been any price filed with the Code?

A. Not at the time this letter was written.

The witness identified Resp. Ex. 753 as a letter dated May 9, 1934, signed by Alpha's Chicago sales manager, addressed to the Division Engineer, Kansas City, Mo., which accompanied Alpha's bid opened on May 10.

(RESP. EX. 753-A and 753-B was offered and received in evidence.)

24050 Q. Now, was a price filed with the Code Authority, Mr. Coogan?

A. Yes, there was a price filed with the Code Authority.

Q. And did you bid the same price or a different price?

A. We bid the same price that had been filed with the Code Authority and filed that price ourselves.

Q. Now, I notice in this Exhibit 753 that your price in this letter is $3.00145 per barrel in paper sacks as the destination cost to the United States Government. I also observe that that is about 10 cents a barrel less than the computation you told us about yesterday, which you figured on this Exhibit 751-A and B on Mr. Fellows' letter to you of April 12.

Can you explain that, Mr. Coogan?

A. Well, it means that there had been a 10 cents lower price filed between the date of 751-B and the last exhibit that was just shown, and inasmuch as that was a lower price we met that lower price and filed the same price ourselves.

Q. Now, the record shows that the next bid received on this Fort Peck job was on June 5, 1934. Did your company bid on that letting, Mr. Coogan?

A. No, we did not submit any bid on the June letting.

Q. What was the reason for your action?

A. As I remember it, the bids which had been opened on May 10th had been rejected on account of the prices being considered too high by the Government, and

24051 when the new letting came out there were prices filed by some of our competitors which were lower than the prices which had been bid at the May letting, and we did not care to quote on the business at those prices, so we did not submit any bids.

Q. Did you bid on the July 25, 1935, letting?

A. No. There again the price, as I remember it, was still lower than the June letting, and we did not submit any bid.

Q. Now, I would like to call your attention to Commission's Exhibit 267-B for a moment. This exhibit, Mr. Coogan, indicates that the Alpha Company bid to the United States Engineering Department at Eastport, Maine, on September 25, 1935. Did you have any connection with your company's bid in that instance?

A. No, this was handled in a routine manner. It was an inquiry for a thousand barrels of cement, and we submitted to the Government the same price that we were charging our commercial business, commercial customers at that same destination.

By Mr. Leisure:

Q. Now, this bid shows that your company bid a destination price at Eastport of $3.04 per barrel in paper, less 10 cents cash discount. How did you determine that price?

A. We took the commercial price that we were
24052 charging at that particular destination and quoted that price; our commercial price at that time was $3.29 per barrel in cotton. We deducted 25 cents per barrel in order to arrive at our paper price and quoted $3.04 in paper.

Q. Mr. Coogan, does the Alpha Company keep any record of delivered prices which they quote to customers?

A. Yes. In our Easton offices we keep that record by customers.

The witness identified Resp. Ex. 754 as a customer's card kept on file at Alpha's eastern office showing the dates of its quotations and the prices quoted by it to its dealer at Eastport, Maine. In many towns, of course, Alpha would have several different cards but they would all contain the same information. Alpha has more than one card for a town, of course, where it is quoting more than one
24053 customer. Alpha does not have many customers on the same card, but keeps an individual card for each customer. The prices on these cards include the discount and the cotton packages. All of its price records in this respect are kept "in cotton".

(RESP. EX. 754 was offered and received in evidence.)

24054 Q. Now, take this bid referred to in Commission's Exhibit 267-B. When you submitted that bid, or

before you submitted it, did you have any communication of any kind with any of your competitors as to whether they were going to—as to what they were going to bid, what your price would be?

A. No, sir; no whatever.

Trial Examiner Norwood: Well, you knew the price had been filed, didn't you?

The Witness: What is the date of that, please? I don't think that was during the Code period.

Trial Examiner Norwood: Oh.

The Witness: That was our price that we had been quoting at that particular destination and we continued and quoted the Government that same price.

24056 The witness identified Resp. Ex. 755 as part of the envelope in which Alpha received the inquiry from the War Department, Eastport, Maine. The pencil figures on the face of the document are figured back to what it would net Alpha at both its Lehigh Valley and its Hudson River mills by deducting the packages and freight from the destination price which it used.

Trial Examiner Norwood: Did you make that out before submitting the bid?

The Witness: Yes, sir.

Trial Examiner Norwood: That is your calculation?

The Witness: Yes, sir.

24057 (RESP. EX. 755 was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, you told us about these figures in general. I think I would like to have the record show clearly—I notice the three columns which apparently have to do with different figures. Would you mind starting with the column on the left-hand side and tell us what that is?

A. The column on the left-hand side shows first the destination price which we quoted. I will have to change that. It shows our destination price in cotton bags. From that we deduct 25 cents a barrel, the differential between our paper and cotton bags, which brings us to a destination price of $3.04. From that we deduct the Lehigh Valley freight rate of $1.25 per barrel, which shows that it nets us $1.79 in the Lehigh Valley, which includes paper bags and discounts.

Q. Now, take the center column. What is that?

A. The center column shows first the rate from
24058 our Alsen mill, to which is added the base figure which we use at that mill, which shows how we arrive at our destination price of $3.29. Then we deduct the paper bag differential and the freight rate from our Hudson River mill, which gives us the net at that mill, which includes the paper bags and discounts.

Q. And the last column on the right?

A. The third column is simply a computation using our base figure at the Lehigh Valley plus the Lehigh Valley rate, which makes our price at that destination one cent higher than using the Hudson River base.

The witness identified Resp. Ex. 756, on the letterhead of the U. S. War Department, as a circular letter issued by the Engineers' Office, Eastport, Maine, dated October 8, 1935.

24059 (RESP. EX. 756 was offered and received in evidence.)

Q. Mr. Coogan, I notice on this letter, Respondents' Exhibit 756, it states that all the bids were rejected because only two competitors quoted a price f.o.b. point of destination. I think you have already told us that your company only bid at a delivered or destination price. Why did your company not bid f.o.b. mill price on this bid?

A. At the time we made our original bid there was no question of land grant or special rates involved, and we saw no reason why we should deviate from our regular commercial practice and quote delivered prices.

24060 The witness identified Resp. Ex. 757 as a letter dated October 8, 1935, written by the manager of Alpha's Boston office to its general sales manager and traffic manager at Easton; Resp. Ex. 758 as an acknowledgment of Resp. Ex. 757 written by Alpha's traffic manager to its Boston office, with a copy to its general sales manager. They relate to Eastport, Maine, but not particularly to the bid which has just been gone over. They have reference to a new inquiry, the previous bids having been rejected.

(RESP. EXS. 757 and 758 were offered and received in evidence.)

24061 Q. Mr. Coogan, I show you Respondents' Exhibits 759-A, B, C, and D, for identification, and ask you if you will identify it.

A. 759-A to D, inclusive, is an invitation to bid to the

United States Engineer, Eastport, Maine, dated October 9, 1935, and to be opened October 18, 1935; and it was a copy of the bid which we submitted in response to that.

Q. I notice some handwriting there, Mr. Coogan. Do you know whose handwriting it is?

A. Part of the handwriting is mine and part of it is the assistant chief clerk in the sales department.

24063 (RESP. EX. 759-A, 759-B, 759-C; and 759-D was offered and received in evidence.)

Q. That bid which you submitted contains a destination price of $3.04 in paper, and it shows a destination cost of $2.85 in paper. How did you arrive at that price, Mr. Coogan?

A. Respondents' Exhibit 757 and 758 shows that information was passed on to our Boston office by the Boston & Maine Railroad manager advising them that the railroads were going to put in a special rate from Rockland, Maine, to Eastport, 5 cents per barrel—5 cents per hundred, or 19 cents per barrel lower than the previous existing rate.

Respondents' Exhibit 758 indicates that our traffic manager had had—

24064 A. Well, the letter from our traffic manager shows that the railroads serving our mills had notified him that they would meet this reduction in rate from Rockland, Maine, and that they would grant a 5-cent per hundred reduction in the rates from either Lehigh Valley or our Hudson River mill, provided shipments were made on Government bills-of-lading. Therefore, in making up our price which we submitted on the October 18 letting, we quoted a destination price the same as we had quoted on the previous letting, but we also quoted a destination cost of 19 cents per barrel less than the destination price quoted on this as well as the previous bid, and used what has been referred to as the control clause covering
24065 this special rate granted by the railroads on this particular movement.

By Mr. Leisure:

Q. So under the action taken by you, what is your testimony? Were you or were you not giving the Government the benefit of this special rate?

A. Yes, the purpose of our two prices was to give the Government the full benefit of the special rate which had been accorded on the movement of this particular order.

Q. Now, in reaching that destination cost of $2.85, did you have any consultation in any way with any of your competitors with respect to it?

A. No, sir; we used the same price that we had used in the previous letting and deducted from that price the difference between the special rate granted the Government and the commercial rate on which our previous figure had been made up.

Q. I would like to call your attention to another Commission's exhibit at this time. I have reference to Commission's Exhibit 387-C and F, and Exhibit 1099-B. They appear to be abstracts of bids made to the Navy Department on May 17, 1932.

Q. They indicate that your company bid on that letting. That is correct? You did bid, did you not?

24066 A. Yes, we bid on this letting.

The witness identified Resp. Ex. 760 as a letter addressed to Alpha's Birmingham office, dated April 28, 1932, by the chief clerk of its sales department at Easton; Resp. Ex. 761 as a letter from Alpha's Birmingham office, dated May 3, 1932, signed by Alpha's Birmingham traffic manager containing the information requested in the letter of April 28th (Resp. Ex. 760). These letters have reference to the Commission's exhibits, the bids just shown to the witness (Com. Exs. 387 C, F, and 1099 B).

24069 (RESP. EXS. 760 and 761 were offered and received in evidence.)

Q. After you received the Exhibit 761, which we have been discussing, Mr. Coogan, did your company then submit any bid on this May 17 opening?

A. Yes, we submitted a bid on the May 17 opening.

The witness identified Resp. Ex. 762 A to E as a 24070 pencil memorandum office copy of Alpha's bid submitted at the May 17 letting made in accordance with Alpha's method of keeping a memorandum, copy or work sheet in making up its bids.

24071 Q. Mr. Coogan, may I ask you, is that the original document prepared at the time that you submitted your bid?

A. This is an office copy of the original document made at the time when we submitted the original bid.

Trial Examiner Norwood: Yes.

Now, aside from the comments, I think that the Counsel has a right to have this witness explain his method of ar-

riving at those figures, and I think by putting it in as an exhibit it probably will take less time and probably be easier to study than if he detailed it in the record in answer to numerous questions.

Mr. Paulson: It seems to me, Your Honor, he has told us how he arrived at the prices of all the bids that he has ever made. He has told us his general practice and
24072 said that that is a rule of the company. I see nothing left in issue about this. The Commission challenges that general practice. Now, we don't need to go into all these particular details.

Trial Examiner Norwood: That is part of the story that is already in, and if he swears that that is the method they used in reaching that figure, he has a right to do it.

Mr. Paulson: Your Honor, he has done it in general.

Trial Examiner Norwood: Yes.

Mr. Paulson: And now he is doing it in particular.

Your Honor is familiar with the number of bids which are in evidence, and Your Honor knows that over the 28 years which we seem to be reviewing here there must be a tremendous number of other and additional bids. To sit here and listen, as Mr. Wooden has said, to an explanation of each and every bid that is in evidence will take us 10 years.

Mr. Werle: Which is more important, your time or the time of the Respondents?

Trial Examiner Norwood: I see no reason why, if that is a copy of the original bid, and he has testified it is, and has his computations on it, I see no reason why it can't go in and save this discussion.

Mr. Paulson: Your Honor, this discussion has to
24073 come some time, because we just can't proceed here on all of the particulars. We seem to be in dispute now as to what is in issue in this case. Mr. Wooden has just said that he is challenging the general practice of the basing point system and the concerted use of it.

Trial Examiner Norwood: And also introduces this particular bid, and here is proof of that general practice, and the Respondents have a right to show anything that would tend to indicate that they arrived at these bids by a method other than by agreement or collusion.

Mr. Paulson: Yes, but they prove it that they did it in accordance with the general practice. They merely prove that they did it in accordance with the general practice.

They do not deny the general practice. There is nothing in issue, if Your Honor please, about that.

Mr. Porter: The Commission's complaint and the Commission's case charges conspiracy, but denies the general practice as a result of economic development.

Trial Examiner Norwood: And he shows the individual method by which he arrived at it.

Mr. Porter: We show what we did, denying the two things in the complaint, conspiracy to produce identical prices,—at least, those bids that the Commission has put in, and uniform or identical prices, which the Government contends raises an inference of collusion. We have
24074 a right individually to show that there was no collusion.

Trial Examiner Norwood: Of course you have.

Mr. Wooden: Of course you have.

Mr. Porter: You deny that.

Mr. Wooden: You have a right to show a departure from that general practice, but you are not showing departure; you are showing conformance to that general practice.

Mr. Porter: Now, if the Government will admit that all the evidence they put in as identical bids is immaterial and will strike it out, then we will say—

Trial Examiner Norwood: Respondents want to show that each individual member of the industry employed this system.

Mr. Porter: I know what I did.

Trial Examiner Norwood: Which produces these results which the Commission alleges is done by collusion: is that right?

Mr. Porter: I do not know what the other companies may do. I know what the Alpha Company did, and we, as an individual do, and we have a right to show what we did.

Mr. MacIntyre: If Your Honor please, may I have just one word?

This is what it simmers down on this proposition:
24075 The witness has already admitted more than once,—in fact, dozens of times,—as to what his method is. What is shown on the computations in this exhibit is in conformity with his testimony over and over and over again. So does it conform with the charges in the complaint as to the use of that method. The only thing this shows is just this, that in this particular instance the math-

ematical computations were slightly different. Now, do we have to sit here and have him put in 10,000,000 memoranda using exactly the same method alleged in the complaint, and admitted, in order to show that he used them 10,000,000 times or 10,000 times?

Trial Examiner Norwood: Let us not anticipate.

Mr. MacIntyre: That is all it does. It shows a mathematical computation.

Trial Examiner Norwood: We will have a five-minute recess. I want to see the paper in the meantime.

(There was a short recess taken.)

Trial Examiner Norwood: This Exhibit 762-A to E just relates to one bidding, one letting?

The Witness: Yes, one letting at a number of different points.

Trial Examiner Norwood: This indicates the manner in which those prices were arrived at?

The Witness: That is correct.

24076 Mr. MacIntyre: If Your Honor please, the original of that bid is in Commission's Exhibit, series 379.

Trial Examiner Norwood: Yes, I shall overrule the objection and receive the exhibit as marked. I will say that that is no precedent. I don't think that should be multiplied to any great extent.

(RESP. EXS. 762-A, 762-B, 762-C, 762-D, and 762-E were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, I notice on the face of Exhibit 762-A a number of pencil notations on the side, on the margin. Do you know what they are?

Trial Examiner Norwood: I thought he told us all about that.

A. 762-A bears pencil notations that we should add a rider on here covering our discount terms; that we should put on another rider covering our decline clause, and also a rider covering the testing of the cement.

By Mr. Leisure:

Q. Were such riders attached to the bid when submitted?

A. They were.

Q. I noticed in the body of the exhibit, the prices are filled in in pencil, and also the plant from which cement

should be shipped if the award was made to you.
24077 What did you do? Were those prices and plants the same as in the bid actually submitted?

A. Yes, they were exactly the same.

Mr. Leisure: May I just look at that again, please?

(A paper was handed to Mr. Leisure by the witness.)

Q. I notice that opposite the various biddings, the destinations there, there appear figures and computations opposite each separate bid. What are those, if you know?

A. The figures shown on the lefthand side are the computations used by us in arriving at a destination price quoted in each instance, except on the last page, 762-E, in quoting to Pensacola we quoted the price which we had been advised by our Birmingham office in a letter which has been previously put in evidence from them.

Q. Can you tell from looking at that exhibit whether or not you bid at Newport, R. I.? I notice that there is on that schedule 7916, class 730, calling for cement to be delivered at Rhode Island, and there are prices filled in, and then a section appears to have been stricken out. Can you tell from looking at it whether you bid there?

A. No, we did not bid at Newport, R. I.

Q. For what reason?

A. Because this calls for delivery to the naval training
24078 station, and there is a trucking service involved from the rail head, and we were not in position to perform that service, so we referred that portion of the inquiry to our dealer at Newport and asked him to submit a bid.

Q. Well, now, the bid shows that at all the points, that you bid delivered or destination prices, Mr. Coogan. Did the Government ask you to bid f.o.b. mill, or any other way, except destination prices in this instance?

A. As a matter of fact, this form specifically specifies that the bids are desired only for delivery, all transportation charges paid, the right being reserved to reject bids for delivery to points other than those specified under each class.

Q. What I want to know is, Mr. Coogan, under that bid could you have quoted an f.o.b. mill price or a destination price?

A. Not and followed out the instructions contained in the form, no.

Q. Well, now, again in making out the unit prices that you named on this bid to the various delivery points, did you have any communication of any kind with your competitors as to the prices you would charge?

A. We did not. We quoted the same prices that we were currently quoting to those destinations to our commercial customers.

Q. You told us a moment ago that you kept customers' cards, individual customers' cards. This bid shows a schedule, that is, the first schedule in the bid calls for
24079 delivery of 200 barrels at Portsmouth, N. H., and it is quoted at a price of $2.03 in paper. Did you keep customers' cards showing your delivered prices at Portsmouth?

A. Yes, we do at Portsmouth, but I don't think that that covers delivery to the Portsmouth Navy Yard. That is at Kittery, Maine.

Q. Then how did you arrive at your price of $2.03?

24080 A. We arrived at our price for quoting for delivery to the Portsmouth Navy Yard by taking the freight rates from the various mills that we used as base figures and took the freight rates and added to that the base figure which we were using at our mills at that time, and quoted that price delivered at the Portsmouth Navy Yard.

Trial Examiner Norwood: Didn't you make all those prices by the same method?

The Witness: Yes, they were all probably made by the same method.

Trial Examiner Norwood: Yes.

The Witness: But we used in a number of cases where the deliveries are at points where we are commercially quoting our prices, we simply took our commercial prices and used them, but also checked our figures on the form which we retained for our files.

Trial Examiner Norwood: But you make the commercial prices by the same method, don't you.

The Witness: Generally speaking, yes. There are exceptions, of course.

24081 By Mr. Leisure:

Q. Mr. Coogan, are the prices to which you have just been referring, and your explanation as to how you

arrived at them—do they appear anywhere on the face of this exhibit?

A. Yes. The freight rates are shown on the lefthand corner, and the computation of how we arrived at this particular destination price is also shown.

The witness identified Resp. Ex. 763 as Alpha's customers card for one of its dealers at Boston, Massachusetts.

Q. You quoted $2.18 apparently in cotton. To save time, just let me ask you: Was that figured in the same way that your Portsmouth price was figured?

A. No. At that time we were quoting a depressed price in Boston, and these figures would indicate that we quoted the Government the same depressed price that we were quoting on our other customers at that time.

24082 (RESP. EX. 763 was offered and received in evidence.)

By Mr. Leisure:

Q. With reference to this Exhibit 763, what was your action or your practice there as to delivered prices, in cotton, in Boston, during the year 1932, Mr. Coogan?

A. Well, at the time, in '32, that we submitted that bid, our commercial price in Boston was $2.18 per barrel.

Q. When was that?

A. I think that was opened May 17th, if I am—

Q. Did there come a time when that was changed?

24083 A. Yes.

Q. What happened?

A. This indicates that there was a reduction of 10 cents per barrel in May 26, '32.

Q. You mentioned a decline clause which you said you used with respect to the previous exhibit, Mr. Coogan. What, if anything, did that have to do with your price quoted?

A. Well, with the decline clause which was attached to our Government quotation, had we been awarded business in Boston upon our bid of $2.18, we would have given the Government the benefit of the lower price after we put that lower price into effect on May 26, '32, and during the time that it remained at that figure.

Q. I show you Respondents' Exhibit 764, for identification, and ask you to tell what it is.

A. This is one of our customers' cards for delivery at Brooklyn, N. Y.

Q. Now, that shows a price of $1.89 per barrel in cotton. How was that price determined?

24084 A. That was an arbitrary price that we were quoting to all of our customers in the Brooklyn market at that time.

(RESP. EX. 764 was offered and received in evidence.)

24085 Mr. Wooden: There is no charge, Your Honor, that competitors sat down around a table and agreed on the prices to be put in at any particular bidding. There is a charge that those identical bids are the results of the basing-point system, the use of the basing-point system, and here is an admission that this particular one was used on the basing-point system.

Mr. MacIntyre: And the witness each time when it is brought up admits and explains that he does use such a method in figuring out his prices, so it is a matter as to whether you are going to have 100, 1,000, 10,000 or 1,000,000 such admissions as to whether he used that

24086 method or some other method. Each time he admits the same method. Do you need another hundred or another thousand such admissions as to the use of that method?

Trial Examiner Norwood: There may be some inferences drawn from their actual practices here which go to the issue as to whether or not these were prices arrived at by collusion or prices arrived at by the employment—by the general employment of a system or a method of pricing.

Mr. Paulson: Your Honor, the identical bids, I believe, show the effects of the use of a certain method of pricing by numerous members of an industry. Mr. Wooden has just said that it isn't in the record to show that they engaged in a separate and individual conspiracy with regard to each bid, but they do show the effect, the concerted use—I will eliminate the word "concerted" from the statement. They show the effect of the use by various companies of a common system, and then the legal question is whether or not that is concerted or collusive action, and that is a question of law.

Trial Examiner Norwood: There is no point there that you can't take up with the Commission and the courts.

Mr. Leisure: Let's get the facts first.

Trial Examiner Norwood: But it is my obligation to permit these Respondents to show us fully and
24087 completely what their system is. Now, these bids that are already in evidence, this man may explain his own bid and the method by which he arrived at the price. Now, as to cumulative evidence and going in further into some detail which appears to me to be irrelevant, I am giving the Respondents at this time the benefit of any and all possible doubts as to that. He may put in these particulars with this witness as to this method and possibly we will draw the line a little closer later on. I don't know. But, anyway, I will overrule the objection.

Mr. Porter: If Your Honor please, just on that point, may I say one word?

Trial Examiner Norwood: Yes.

Mr. Porter: The courts have held that where identical prices are shown, that that very fact unexplained raises an inference of an agreement on those identical prices. The statement by Commission's Counsel here now, that they are not going to contend that isn't binding on them, we have the legal proposition that the courts have raised, that that does raise an inference of a conspiracy and an agreement in the absence of explanation. The Supreme Court has said it is incumbent upon Respondents to give that explanation. That is what we are trying to do.

Trial Examiner Norwood: Yes.

24088 Mr. Porter: If the Commission's attorneys are sincere in their statement that they can present a proper legal document withdrawing all of that evidence, evidence that they have spent two years in putting in, they can present a proper document formally admitting that there is no inference to be drawn from identical prices. We do not deny the method, that we used basing points, and we quote delivered prices, if that is all they want. If that is all they want this case could have been presented in 30 days. They have spent 2 years in putting in this mass of stuff, and now they say "You must not in any way impair or deny the evidence we put in." It is a most astonishing proposition that any attorney has ever presented to any tribunal.

Mr. Wooden: Mr. Porter misstates my position. I did not state that we would never contend that identity of

bids was no evidence of collusion or concerted action. We frankly will contend it. I did not say that we would not. I did say that we would not contend that in the case of every bidding or every letting that the Respondents sat around the table and agreed that they would present certain bids. But we also contend that the use of the system makes that unnecessary. They get the results, the same results as though they did sit around the table, by using the system.

24089 Trial Examiner Norwood: Aren't you willing to let them show what the system is?

Mr. Wooden: They are not showing it in any different way than we have shown it, Your Honor. They are admitting the general practice, and they are simply saying in this case, "Yes, we did it in that case; we are doing it in this case." And they go on and show and can show thousands of cases where they did it.

Mr. MacIntyre: And, if your Honor please, they have shown it no less than two dozen times already this morning. My point is how many more times is it necessary for them to show that they do use this system that the Commission has alleged that they have used?

Mr. Porter: Every time you put in an exhibit.

Mr. MacIntyre: Do they have to show it 10,000 times that they are using it?

Mr. Leisure: Every time you did it, Mr. MacIntyre.

Trial Examiner Norwood: There are a large number of bids that are in evidence here, and the Respondents this morning have shown different methods of arriving at the price. I don't see how I can draw the line just at this time, the line of relevancy. The objection is overruled.

Mr. Leisure: Not only that—

Trial Examiner Norwood: Later on I have no doubt that we shall reject evidence as cumulative if it is
24090 offered either by Respondents or the Commission, but we will climb that hill when we get to it.

By Mr. Leisure:

Q. Mr. Coogan, I show you Respondents' Exhibit 765, for identification. Will you tell us what it is, please?

24091 A. Respondents' 765 is our customer's card covering our customer at Lakehurst, N. J.

Q. Then I asked you another question about the Lakehurst letting. I do not just remember where we left off,

Mr. Coogan. I would like to know what price changes there were for the New York delivery with respect to Lakehurst.

A. Well, there was no change in the price of $1.89 per barrel at New York until December 27, 1932, when we changed our price.

By Mr. Leisure:

Q. And with respect to what place, now, are you telling us about?

A. I am talking about Brooklyn, N. Y.

24092 Q. Now, I would like to call your attention to Respondents' Exhibit 765. I notice a different price on that customer's card than the one that is contained in this bid. Have you any explanation for that?

A. Let me see the bid.

(Mr. Leisure hands a document to the witness.)

A. No. The price quoted on this inquiry is the same as shown on our customer's card, $2.02 per barrel. Now, that price was advanced by us May 31, but at the time we submitted this bid that was the price that we were quoting to our commercial customers at Lakehurst, N. J.

Q. Well, just keep that exhibit.

Then the price at Philadelphia is quoted at $1.93.

Q. How do you explain that? You will find it on page 6 there, Mr. Coogan.

A. Well, that price that we quoted to the Government f.o.b. Philadelphia Navy Yard was our commercial price in Philadelphia, at that time.

Q. I notice you have on the margin there "L. V.-10.5" and "VF-6-25." What does that mean?

24093 A. That means the freight rate from the Lehigh Valley and from the Valley Forge mill at Swedeland. At that time we were using a base figure at Swedeland, and, Swedeland having the lowest rate and lowest combination, our delivered price was made up on our Swedeland base figure plus the freight rate from that mill.

Q. Were those figures to which you have just been referring, and the rest of the pencil memoranda in that exhibit, for that matter, were they made in the regular course of business as of the time the document was prepared?

A. They were.

Q. Mr. Coogan, can you tell us what Respondents' Exhibit 766 is, please?

A. Respondents' 766 is our customer's card showing quotations made to one of our customers in the Philadelphia market.

24094 (RESP. EXS. 765 and 766 were offered and received in evidence.)

Trial Examiner Norwood: I think I shall reject as cumulative any further cards and figures here unless they demonstrate a different method. In other words, if you pick out another destination where the price is figured by the same method as one of the methods you have shown here, I think, that it is cumulative and we should not waste our time on it.

Mr. Porter: Your Honor, the Government put in 2,500 different bids.

Trial Examiner Norwood: Yes.

Mr. Porter: All cumulative to the same thing. We have got to meet the evidence on each bid.

Trial Examiner Norwood: I understand that. And your witness may say that the rest of them were arrived at by the same method.

Mr. Leisure: If your Honor pleases, I want to make clear that in offering this documentary evidence we
24095 do it for two reasons: In the first place, we deny that there is such a thing as a system, as described by Counsel for the Commission. In the second place, when the Government has put in bids, and we have documentary evidence which shows how we arrived at the bid which the Government put in, I do not feel that it can be called cumulative when we are merely following along in the Government's footsteps.

Now, if they want to withdraw any of those bids, so that we will not have to spend any of that time, I shall be very happy to discontinue making the offer; but so long as the bids remain in the record, which the Government has put in, and we have separate documentary evidence showing that we did not arrive at the final result as a matter of collusion, I want to urge your Honor in every way that I know how that I feel that for us to have a fair trial we must have the opportunity to meet those charges and that evidence presented by the Government.

Trial Examiner Norwood: You may show these methods but you need not do it by constantly repeating where no new information is presented here in a manner that will prolong this investigation and encumber this record.

Mr. Leisure: There is nothing that has been presented that does not present any new information and does not meet any specific evidence by the Government.

Trial Examiner Norwood: All right.

24096 Mr. Wooden: You have already presented much that is not new information, and it has been received.

Mr. Wooden: I want the record to show that I believe Mr. Porter's statement that we put in 2,500 separate bids to be in error. I do not think we put in anything like that.

By Mr. Leisure:

Q. Mr. Coogan, I would like to call your attention to Respondents' Exhibit 766. Have all these basing points actually been used by you in determining your Philadelphia prices?

A. No, not all of them that are stated on there. This card contains a great many more points than what could possibly get in there, but in a great many cases there are no rates filled in underneath them.

Q. I notice in this exhibit there are certain pencil marks, longhand writing. Do you know what they are?

A. Well, those represent change in our sales-
24097 men's fees, initials of salesmen, and there is one pencil note that has reference to the freight rate from Valley Forge, with the notation that that rate did not change.

Q. And were they made in the regular course of business at the time?

A. Yes, on the records when I got them out and made at the time that they were put on there.

Q. I notice here, Mr. Coogan, on Respondents' Exhibit 766, there is a typewritten quotation "VF", then there follows the figure "17," and there is shown a freight rate apparently of 17 cents a barrel. Will you explain that, please?

A. Seventeen cents represents the present freight rate from the Valley Forge mill at Swedeland to Philadelphia.

Q. Where is Valley Forge, Mr. Coogan?

A. The railroad station is at Swedeland near Philadelphia.

Q. Do you use the Valley Forge or Swedeland base in determining your Philadelphia price at the present time?

A. At the present time we are using a figure at Swedeland for arriving at the destination price that we quote at Philadelphia.

Q. You say "at the present time." Was there some time when that was not so?

A. Yes, there was some time when we did not use that figure. As I remember it, the Allentown Company put in a base figure at that mill some time in July, 1938,
24098 and we have been using that figure since we have found that they were quoting prices based on their mill at Swedeland.

Q. Well, you say "at this time." Had you used it at any time prior to 1938?

A. Yes, that was used, as I remember it, back in about 1932, and then, as I remember it, it was—we found that it had been discontinued, so we discontinued it. Then when we found that they had reestablished a base at that mill and were using that figure, then we again began using it.

The witness identified Resp. Ex. 767 as a customer's card of one of Alpha's customers at Washington, D. C.

Q. Does it or does it not indicate what your commercial price was at Washington during the period covered by this bid?

A. It does indicate what our price was at that time.

24099 (RESP. EX. 767 was offered and received in evidence.)

Q. Do you know, Mr. Coogan, whether or not on this bid in Washington you quoted your regular commercial price?

A. We did. We quoted the same price that we were currently quoting to our commercial customers in this market.

24103 Q. Mr. Coogan, I would like to call your attention to Respondents' Exhibit 762, pages 6 and 7 of that document. It is shown that you quoted a price of $1.87 in paper in White Plains, Md., Indianhead siding. Just opposite that price there are some figured computations. Do they have anything to do with the price you quoted at that point?

A. Yes. It shows how we made up our destination price for delivery to Indianhead.

If my memory serves me correct, that is a very
24104 small place and we probably at that time did not have any commercial price for that particular delivery, so that the price which we quoted here is made up

in the same manner that we made up our price at that time to destinations in that vicinity.

Q. Yes.

Now, without going through that with any more detail; did you keep a customer's card for that point?

A. Well, I am not sure. I think we probably had a customer's—we might have had a customer's card for White Plains, but I am not sure that we did. I do not think we had a customer's card for that particular point.

Q. Why would you not have one, Mr. Coogan?

A. Well, because there is probably no dealer located at that particular point.

24105 The witness identified Resp. Ex. 768 as a customer's card for one of Alpha's customers at Norfolk, Virginia.

(RESP. EX. 768 was offered and received in evidence.)

24106 Q. I would like to call your attention to Exhibit 761, Respondents' exhibit, which is Mr. Bethune's letter to you of May 3d, and he gave you a Charleston delivered price of $2.38, apparently, and on this bid at page 8, for delivery at Charleston, you quoted a price in cloth of $2.23. Why did you make that different price?

A. At that time we were quoting our commercial customers the price shown in Mr. Bethune's letter, and in order to assist our customers in meeting foreign competition, we gave them a rebate of 15 cents per barrel, and in quoting the Government instead of applying that practice we quoted the Government the flat price by deducting that special dealer allowance which we were making to customers in those markets.

Q. This same exhibit shows that for delivery at Pensacola you quoted a price of $2.37 in cloth bags whereas Mr. Bethune's letter of May 3d, Respondents' Exhibit 761, shows that the Alpha Company delivered prices at Pensacola at that time was $2.34, and states that the delivery that the Government asked at Warrington included a switching charge. What switching charge was referred to there, if you know?

A. Well, there was a switching charge applied by the railroads from Pensacola to the Navy Yard at Warrington.

Q. Which of the two switching charges referred to in Exhibit 761 did you use, if either?

A. Well, we used the switching charge mentioned
24107 in Bethune's letter and divided that by an estimated number of barrels per car and arrived at a switching charge of $2.007 per barrel. Now, we used 300 barrels because the inquiry was for 1,200, and we felt that it would probably be divided in equal carload lots.

Q. $2 and .7 cents, is that what you say?

A. That is what we added to our price, yes.

Q. And did you keep or reject or drop the extra fraction?

A. We dropped the extra fraction. We did not meet a lower switching figure than that used by one of our competitors in 1931. We took the present switching rate, divided that by the estimated number of barrels per car, and applied that to our bid.

Q. And the delivered price at the Navy Yard was as indicated by the exhibit, 2.367?

A. That is correct.

Trial Examiner Norwood: That fraction you dropped there, what was the fraction you dropped?

The Witness: .12367.

Trial Examiner Norwood: .1?

The Witness: .1, yes.

By Mr. Leisure:

Q. In reaching these figures that you have been telling us about, Mr. Coogan, did you have any communication of any kind with any of your competitors as to those figures or prices?

24108 A. No, sir; I did not.

Q. Calling your attention again to Government's Exhibit 1099-B, will you look at the last column and tell us whether or not you can tell from that which switching charge was used there?

A. No, you can't tell from those figures what switching charge was used. As a matter of fact, the prices quoted with one exception are different prices quoted f.o.b. that destination. There are only two prices, as I look at this exhibit, that were the same.

Q. I want to call your attention, Mr. Coogan, to
24109 another Commission exhibit, 386-G. It is of the Navy Department, dated December 6, 1932. Did the Alpha Company bid on this letting?

A. Yes, according to this tabulation, we submitted bids on this inquiry except to Newport and Brooklyn.

24111 The witness identified Resp. Ex. 769 A to F as an office copy of a bid submitted by Alpha to the Navy Department, opened December 6, 1932. There are three loose-leaf riders pasted to the face of the document which were on the original bid as submitted to the Government.

A. Yes, they were on the original bid as submitted to the Government.

Q. I also notice on one page here there are certain matters stricken out, and it appears to be carried forward at the top of the next page. Will you tell me what that means, where it is stricken out at the bottom of the second page?

A. Well, this indicates that we had filled in the figures at which we were going to quote at the Brooklyn Navy Yard, and then for some reason we must have later
24112 on changed our mind, because that part of it is crossed out.

Q. It is crossed out, and then I notice at the top of the next page, the following page, page 5—is there any relationship between the two?

A. No, the one simply fills in where the cloth bags are to be returned to, and the other one is the name of the bidder and the mill from which the cement was to be shipped.

24113 (RESP. EX. 769-A, 769-B, 769-C, 769-D, 769-E, and 769-F," was offered and received in evidence.)

24114 Q. Mr. Coogan, on this Commission's exhibit, on this bid, which is in evidence, the abstract of all the bids, it indicates that invitations called for bids at Portsmouth, N. H., Boston, Mass., Newport, R. I., Brooklyn, N. Y., Newark, N. J., Philadelphia, Washington, White Plains, Md., Norfolk, Va., Sewell's Point, Va., Charleston, S. C., Pensacola, Fla. Did you submit bids to all of those points?

Let me direct your attention to this Commission's exhibit and ask you whether or not you submitted bids to Newport, R. I. Perhaps we can save time that way.

A. No. According to this tabulation, and according to the office copy here, we did not submit bids in this particular case to Newport, R. I., or to Brooklyn Navy Yard.

Q. Have you finished your answer?

A. Well, there was a trucking service involved in the delivery to Newport, R. I., and we did not quote on that,

and for some reason we decided in that case not to quote on the Brooklyn.

Q. In the bid that you put in to the Navy on May 7, 1932, I notice that you quoted a price $2.03—that is Exhibit 762—in paper at Portsmouth. You have already told us about that, but in this bid of December 6, 1932, you quoted a price of $2.32 in paper at Portsmouth, or 29 cents higher. What have you to say, if anything, as to that, Mr. Coogan?

24115 A. Well, I think the customer's card, which was filed with the other exhibit, would show that we changed our commercial price in the meantime, and when we quoted on this inquiry in December we quoted again the commercial price which we were quoting to our customers at that time.

Q. Now, in the May bid for Boston, Exhibit 762-A, you quoted a price, according to this bid, of $2.18 in cloth; whereas, in the December bid, you quoted a price of $2.37 in cloth, or 19 cents higher. What is the reason for that?

A. Well, the customer's card, which has already been put in evidence, will indicate that during the dates between those two bids we had changed our commercial price at Boston, and we quoted the commercial price which we were currently quoting at that time.

Q. In Respondents' Exhibit 762, which is the May bid, I notice you quoted a price of $2.02 at Lakehurst; while in December you apparently bid a price of $2.31 at Lakehurst, which is an increase of 29 cents. Do you remember those circumstances?

A. Well, the customer's card, which I have al-
24116 ready produced, would indicate that at that time that was the price that we were charging our commercial customers at that particular destination, and we quoted that same price to the Government.

Q. Again, in the May bid, you quoted a price, according to the bid, of $1.93 at Philadelphia, but in December you bid a price of $2.24 at Philadelphia, that price being for cement in cloth. This appears to be an increase of 31 cents a barrel in that time. What have you to say as to that, if anything?

24117 A. We had increased our commercial price in the Philadelphia market during the dates of those two bids, and we quoted our going commercial price which we were quoting at that time on this Government inquiry.

Trial Examiner Norwood: Why had you increased the commercial price?

The Witness: Because we felt we could get it.

Trial Examiner Norwood: It was not in competition?

The Witness: Yes, sir; plenty of it; plenty of it. As I remember, this particular advance in price was put out by some of our competitors. We consulted about it
24118 within our own company and decided that we would take advantage of that competition, because we had been losing very large sums of money in the meantime.

Trial Examiner Norwood: In other words, the competitors raised the price, and you met it?

The Witness: Yes, sir. We took advantage of it.

By Mr. Leisure:

Q. Was there any change in the basing point you used, Mr. Coogan?

A. I think in the case of Philadelphia that that was about the time that the competitor with the mill at Swedeland discontinued using that as a base.

Q. Now, perhaps I can save some time on this, Mr. Coogan.

Can you tell me whether the prices that you quoted in December for delivery at Washington and at White Plains, Md., and at Sewell's Point, Va., were your regular commercial prices that you were charging your commercial customers at those points at that time?

A. Yes, sir; they were.

24119 The witness identified Resp. Ex. 770 as a letter dated November 8, 1932 written by the chief clerk in Alpha's sales department at Easton to its Birmingham office; Resp. Ex. 771 as a letter from Alpha's Birmingham office dated November 15, 1932, which is in reply to its letter of November 8th (Resp. Ex. 770); Resp. Ex. 772 as an additional letter from Alpha's traffic man at Birmingham addressed to its sales office at Easton covering further information relative to the Navy Department referred to in the other two exhibits (Resp. Exs. 770,
24120 771); Resp. Ex. 773 as an office memorandum made in Alpha's Easton office containing information for use in connection with the consideration of the Navy Department bid at Pensacola.

Q. On that exhibit—I am referring to Respondents' Exhibit 773—I see some figures here. What are they?

A. This is a pencil memoranda of a price which we quoted on the navy inquiry for Pensacola, Fla., and it is an alternate price and explains how that price has been made up.

Q. Did you bid at Pensacola? Did you submit a bid at Pensacola? If you did, tell us under what circumstances you submitted that bid.

A. Yes, we submitted a bid at Pensacola, Fla., and we also submitted an alternate bid in accordance with this pencil memoranda of an f.o.b. mill price to be shipped on Government bill-of-lading.

Q. Was that made up on your commercial rate? How did you arrive at that bid, Mr. Coogan?

A. The destination price was made up on our commercial price plus the switching charge to the Navy Yard. The alternate mill price was made up in accordance with information contained in the Exhibit 772, a letter from our Birmingham office dated November 23d.

24121 Q. You say "alternate mill price." Was that a destination cost bid or a straight f.o.b. mill bid?

A. Straight f.o.b. mill bid.

(RESP. EXS. 770, 771, 772, and 773, were offered and received in evidence.)

By Mr. Leisure:

Q. Now, according to this exhibit, if the Government accepted your $2 mill bid and shipped on a Government bill-of-lading on the land-grant rate, the cost of destination would have been $2.3125 f.o.b. Pensacola. Can you tell me whether or not the Government paid the switching charges from Pensacola to Warrington, $8.13 shown on the exhibit per car?

A. Yes, they would have to pay that switching charge to get delivery at Warrington.

Q. And on the basis of a 300-barrel car that would be what per barrel?

A. According to our tabulation, 2.3406.

Q. That is the total. I am talking about the switching charge.

24122 A. The switching charge is $8.13 per car, and that reduced to barrels is 2.71 cents.

Q. Now, taking all of these bids, Mr. Coogan, to these various destinations on December 6th to the Navy Department that we have been discussing here, did you have

any communications of any kind with any of your competitors either as to the prices that you would bid or as to what prices any of your competitors would bid?

A. No, sir; I knew nothing whatever about any prices except our own prices and what correspondence we had with our own office at Birmingham.

Q. Mr. Coogan, I neglected to ask you on that last Annapolis bid whether or not this Exhibit 774, for identification, had any connection with that bid.

A. Respondents' Exhibit 774 is our customer's card covering our customers at Annapolis, Md.

Q. Did it have any connection with the bid that we described before I asked you the general question, the Annapolis bid?

A. There is an additional charge, freight charge, for delivery to the Annapolis Navy Yard over the An-
24123 napolis rate, so in that respect the price which we used in this particular bid would be different from our customers' card at Annapolis, Md.

Trial Examiner Norwood: Just state whether or not it had any connection.

The Witness: Well, it certainly has a connection because the two must tie in together. There is a difference in freight rates to the Navy Yard and to the City of Annapolis, and in quoting the Government, the additional freight charges are reflected in the price which we quoted.

24124 (RESP. EX. 774 was offered and received in evidence.)

By Mr. Leisure:

Q. Now, Mr. Coogan, without going into unnecessary detail on the next Commission's exhibit here, I am going to call your attention to Commission's Exhibit 1099-C, which is an abstract of June 6, 1933, and without
24125 going into detail, can you tell us how you made up your prices on that bid?

Mr. Paulson: Your Honor please, is it clearly understood that these are being received because they are variations of the general practice, and for that reason alone? And if they were not variations Your Honor would not receive them?

Trial Examiner Norwood: No, no. We are admitting these to show his method in making these prices, they be-

ing prices that have been shown by the Government to have been bid by this Respondent.

Mr. Paulson: Well, I raised the question. I thought the ruling was, as I stated it before, and that ruling would have been more in accordance with Commission Counsel's opinion and safeguard us from a tremendous amount of detail that other Counsel may want to do the same thing for their companies, and a precedent once set I imagine we shall have greater difficulty in eliminating the endless detail. Other customers' counsel may wish to explain each and every bid they put in, and the Alpha Company having been allowed to do it, I presume it would be very difficult; under your former ruling, Your Honor, you allowed only the variations and that was a better protection.

Trial Examiner Norwood: I stated that I should be inclined to exclude cumulative instances here, but I
24126 shall not draw the line just here with this witness. I think it is advisible to receive a complete picture from this Respondent here, and we will take care of the other situations as they come up and of this situation as it proceeds.

Mr. Paulson: It is very plain that it involves every instance in which the Alpha Company was involved in a Commission's exhibit. I object to the question.

Trial Examiner Norwood: Well, strictly speaking, isn't he entitled to explain—

Mr. Wooden: Yes.

Trial Examiner Norwood: —each and every price?

Mr. Wooden: Technically, the position is above reproach, but substantially—

24127 Trial Examiner Norwood: Well, I think as we proceed here that methods will occur to the Counsel on both sides which will shorten this, but I do not think we have reached that stage yet.

Go ahead.

A. On this letting we quoted the same prices that we were currently quoting to our commercial customers at the points mentioned, with the addition of any additional switching charges which are assessed in order to make deliveries at some of the navy yards over that required for the deliveries within the city.

By Mr. Leisure:

Q. Now, as to that letting, introduced in evidence in this case by the Commission, did you have any communica-

tions of any kind with any of your competitors as to the bid, either as to the price you would quote or the price that your competitors would quote, before the bids were opened?

24129 A. I did not.

By Mr. Leisure:

Q. Again, Mr. Coogan, with another letting, introduced in evidence by the Commission—I have reference to their Exhibit No. 1099-D, without reference to your customers' cards, and without referring to the other exhibits, let me just ask you the simple question how you arrived at your price there (handing to the witness).

24130

Mr. Paulson: I object to the question on the same grounds as heretofore.

Trial Examiner Norwood: Objection overruled.

A. Without comparing this tabulation, I would say that the prices which were quoted on this were the same as our commercial prices, except where there was additional freight charges involved for deliveries to the Navy Yard.

Now, I would want to check up on the price shown here for Pensacola, because it may be possible that that is made up of a land-grant rate, although I think not. I think it is the commercial price plus the extra switching charge for delivery at Warrenton.

By Mr. Leisure:

Q. Was this bid submitted during the Code period?

A. Yes; this was submitted in June, 1934.

Q. Do you know, Mr. Coogan, whether or not you filed prices with the Code Authority for the various prices that you named in this bid?

A. Yes; during the Code we filed every price that we quoted.

Q. Now, you mentioned Pensacola, and the record shows you were invited to bid in two forms: One, all transportation charges paid to the Navy Yard or

24131 Corry Field; and the other form f.o.b. cars at your plant.

Do you recall whether you submitted bids on both forms, Mr. Coogan?

A. No. As I recall it, at that time we quoted a destination cost or price and used the so-called control clause in giving the Government what was equivalent to a mill

price in order that they could use Government bills of lading.

Q. Now, why did you not comply with the Government's invitation of a straight f.o.b. mill price, as the record shows you had done in some previous lettings at Pensacola?

A. Because in the meantime we had filed our prices in terms of sale and all other terms, and we had no price filed f.o.b. our mill.

Q. What is your recollection, if any, as to whether this destination cost which you quoted the Government,—was it first filed with the Code Authority by your company or by someone else?

A. I think it had been filed by somebody else before it was ever filed by us.

Q. Let me call your attention to another letting, introduced in evidence by the Commission. I refer now to 1099-M, Mr. Coogan (handing to the witness).

Let me ask you with respect to that bid: Did you use the same form of control clause that you used in other destination cost bids?

24132 A. Yes. This bid was also made during the Code period and the same control clause was used where we quoted destination cost.

Q. Without detail, is that, again, a case where you used your commercial rate, Mr. Coogan, or is that different?

A. No. As I said, we used our commercial rate except where there is additional freight charges for Navy Yard deliveries over the town deliveries.

Q. Now, let me call to your attention another letting, introduced in evidence by the Commission, 1099-R.

Mr. Leisure: I ask to have marked for identification a paper dated May 27, 1936, please.

(The document referred to was thereupon marked for identification "Respondents" Exhibit 775.")

By Mr. Leisure:

Q. Mr. Coogan, I show you Respondents' Exhibit 775, for identification, and ask you to identify it.

A. Respondents' 775 is a letter written by the chief clerk in our sales department to our Washington representative, a copy to our representative at Richmond, advising them of bids we had made to the Navy Department which were to be opened on May 29, 1936.

24133 (RESP. EX. 775 was offered and received in evidence.)

The witness identified Resp. Ex. 776-A to E as Alpha's office copy of a bid submitted to the Navy Department, bids opened May 29, 1936.

Q. I notice there are pencil notes on the face of the document. Can you explain them, Mr. Coogan?

A. Well, the only notation,—there is one marked "rider." That calls attention to the fact to put on the discount terms as we quoted them on all of our other work.

24134 (RESP. EX. 776-A, B, C, D and E was offered and received in evidence.)

Q. Without going into detail, Mr. Coogan, may I just try to save some time? Without going into any detail on the description, will the customers' cards, which are

24135 in evidence, show what were your commercial prices at these destinations?

A. They will in every case except where there is an additional charge for delivery to the Navy yards.

Q. Now, I notice, Mr. Coogan, in this Exhibit 776, that you quoted a destination cost at Pensacola for movement on Government bills-of-lading, and they do not appear to be the same as the ones appearing on Exhibit 1099-M. Was there any change in your policy, or can you explain that difference?

A. I think there is something left out of this office copy. And there is some pencil notations that have not been made on this copy in connection with the bid to the Pensacola Navy Yard.

Q. Is the price any different in this one than from

24136 the price of the year before?

A. The price in the pencil copy in this particular one doesn't appear to be shown.

Q. But, as I understand it, without spending further time on the exhibit, you arrived at your price as you have already told us from your commercial price; is that so, Mr. Coogan?

A. Taken in connection with Respondents' Exhibit 775, it can easily be cleared up because 775 supplies what deficiency there is in that copy. Our price at Corry Field, our destination cost was 2.4635, whereas in the bids which were opened on May 10th, the destination cost was 2.4445. Now, in the meantime, I think you will find that there has been an increase in the freight rates; that is, I think there was an emergency charge put in about that time, and that

was approximately 4 cents per barrel, but, of course, the Government land grant would be a little less than that 4 cents.

Q. You haven't yet told us how the Pensacola price was determined, though, Mr. Coogan.

A. The Pensacola price?

Q. Yes.

A. The Pensacola price was our commercial price at that point.

Q. That is what I want to know.

A. And the destination cost was using the land-grant rates.

Q. Let me call your attention to another letting
24137 put in evidence by the Commission bearing the Exhibit No. 1099-W.

24138 Q. Will you identify Respondents' Exhibit 777, for identification?

A. Respondents' 777-A to L is an office copy of a bid submitted by us to the Navy Department opened May 18, 1937.

24139 (RESP. EX. 777-A to 777-M was offered and received in evidence.)

Q. Now, Mr. Coogan, in the interest of saving time, without going through these various destinations here—well, let me divide my question in two parts:

24140 With the exception of Pensacola, did you arrive at your price quoted in the manner that you have already described?

A. Will you let me see that tabulation? I want the tabulation for this bid.

Q. Here it is (handing a document to the witness).

A. In this particular case I can testify that all of these prices which we quoted on this particular letting are our commercial prices at those destinations with the usual freight rate proviso for delivery to the Navy Yards, and even in this case that includes Pensacola because at that time we were using a base figure at Pensacola, and that base figured applied—the minimum line haul rate applied to Pensacola, made a lower price at Pensacola than the Government destination cost would have been, so that in this case we quoted our commercial price at Pensacola as well as at our other points.

24141 Q. Mr. Coogan, I show you Respondents' Exhibits 778, 779, and 780, and ask you if you know what they are.

A. Respondents' Exhibit 778 is a letter by the chief clerk of our sales department addressed to our Birmingham office, dated May 5, 1937.

Respondents' 780 is a letter from our Birmingham office, dated May 7, 1937, addressed to us at Easton.

Respondents' 779 is a letter dated May 5, from our traffic man at Birmingham addressed to the chief clerk in our sales department at Easton.

Q. Now, you just told us about your price at Pensacola. Let me ask you, do those exhibits relate in any way to the price you quoted at Pensacola?

A. Yes. These papers give us the information which we used in making the bid.

24142 (RESP. EXS. 778, 779, and 780 were offered and received in evidence.)

Q. Calling your attention, Mr. Coogan, to Exhibit 780, which is this letter from the Birmingham office to the effect that the prices applicable to Warrenton and Corry Field are the same as for Pensacola, the previous bids indicate there had been a difference due to a switching charge. What have you to say, if anything, as to that in this instance?

A. Well, we had established a base figure which we used at Pensacola, and we applied to the minimum line-haul rate to that for deliveries to Pensacola, and that covered the deliveries to Warrenton, which came under that, and made the price the same as to Pensacola, be-

24143 cause there was only a switching charge involved in moving shipments from Pensacola to Warrenton.

Q. Now, with reference to this exhibit, of which there has been some discussion as to whether it is a duplicate 777, let me call your attention to page D, as it is marked as an exhibit. On the copy of your bid submitted I notice there is a typewritten rider giving the prices that you would bid at Pensacola, and then someone has filled in typewriting commercial prices and destination cost, and then those were stricken out and lead pencil prices substituted, the typewriting prices appearing as $2.78, while the pencil prices show $2.40. Can you explain that?

A. I can if I can have the previous exhibit of the previous Navy bid, I think.

Mr. Werle: The previous abstract, you mean?

The Witness: Well, give me an abstract. That might do.

(A paper was handed to the witness.)

A. These changes show that the party in making up this bid, in making up his original tabulation, used the same figures that we had quoted on a previous bid and then after we got the information contained in those letters, which have just been put in from Birmingham, it showed that our commercial price at Pensacola had been reduced since the last opening and the pencil figures
24144 show the new prices which were inserted after receipt of those letters.

Q. Were the new prices lower or higher, do you know?

A. Lower.

Q. Mr. Coogan, I don't know that this question is really necessary. Were those prices that you have just described made as of the time that you prepared this document, prepared in the regular course of business?

A. They were.

Q. I show you Respondents' Exhibits 781 and 782 and ask you if you can identify them.

A. Respondents' Exhibit 781 is a letter from us at Easton, dated May 17, 1937, addressed to the Paymaster General of the Navy.

Respondents' Exhibit 782 is a copy of a telegram sent on May 17, 1937, to the Paymaster General of the Navy.

Q. What was the relation, if any, between these exhibits and your bid, Mr. Coogan?

A. This request that certain stipulations and riders be included in with our bid which had been mailed—already mailed.

24145 (RESP. EXS. 781 and 782 were offered and received in evidence.)

Q. I wish to call your attention now to another letting introduced by the Commission in evidence, Commis-
24146 sion's Exhibit No. 372-A, and this Commission's exhibit indicates that the Alpha Company bid on September 6, 1935. Well, first, let me ask you, did you make such a bid at that time?

A. Yes, this indicates that the Alpha Company submitted a bid for the Northern Penitentiary at Lewisburg, Pa., on September 6, 1935.

The witness identified Resp. Ex. 783 as one of Alpha's customer's cards covering its customer at Lewisburg, Pennsylvania.

Q. Does it show your commercial price, Mr. Coogan?

A. It does.

Mr. Leisure: I offer it in evidence.

Mr. Wooden: The same objection as before to the same type of document.

Trial Examiner Norwood: Received as marked.

(RESP. EX. 783 was offered and received in evidence:)

By Mr. Leisure:

24147 Q. Mr. Coogan, on this card I notice there is writing "four-cent zone." What does that mean?

A. Well, I explained that, that some of those pencil notations of that kind refer to another product which we make and market, Alpha mortar cement, and we usually quote that as so much under our going prices on cement, and this is simply marked on these customers' cards so we know how to quote if it is necessary to quote them on mortar cement.

Q. Let me call your attention to another letting submitted in evidence by the Commission, bearing Exhibit No. 14. This shows bids submitted to the Commonwealth of Pennsylvania, opened on May 26, 1937. First, let me ask you, did your company bid on that letting?

A. Yes, we submitted bids on this letting.

The witness identified Resp. Ex. 784 A to C as an office copy of the bids submitted by Alpha to the Commonwealth of Pennsylvania, opened May 26, 1937.

Mr. Leisure: I offer it in evidence.

24148 (RESP. EX. 784-A, 784-B, and 784-C was offered and received in evidence:)

Q. Mr. Coogan, on the back of this exhibit, Respondents' Exhibit 784-C, under the heading "purchase contracts," there are the following words: "The ma-
24149 terials listed in the proposal must be delivered f.o.b. the point or points shown on the proposal." What did you understand from this statement?

A. Well, I understood that they wanted and would insist on having prices delivered at the various destinations.

Q. Again, Mr. Coogan, did you make up those prices as you have already described?

A. Yes, we made them up exactly the same as we were quoting our commercial customers at these various points at that time.

The witness identified Resp. Exs. 785 to 793 inclusive, as Alpha's customers' cards covering every point at which Alpha quoted prices shown on Resp. Ex. 784 A.

Mr. Leisure: We offer them in evidence (handing the exhibits to Mr. Wooden).

Mr. Wooden: I object, Your Honor, to the offer of these additional customers' cards as simply unnecessarily duplicating, repeating, and cumulating documentary records which have been fully covered by the wit-
24150 ness' testimony to the effect that they use their commercial prices in making their bids on State and National Government requirements.

I am perfectly willing to stipulate that they do make the same prices on Government bids as they do on commercial business, and will offer no objection to proof of cases where they do not, but I do object to this continual, interminable building up of the obvious. It adds nothing to what the record already shows, and if the same course be followed with reference to other Respondents, the purpose is very obvious.

Mr. Leisure: If Your Honor pleases, I think we will have to cross the bridge as to whether it is pertinent when we come to them. That is not before Your Honor at this time for ruling. The question at this time before Your Honor is whether or not we may offer this documentary evidence. Mr. Wooden has said that the witness has so testified. Well, of course, it is our position that he has not only testified to that effect but these documents prove it and that is why it is important for us to have them in the record.

Mr. Wooden: And I will stipulate—

Trial Examiner Norwood: You are offering this to corroborate the witness—that is, the office cards here?

24152 Mr. Leisure: Each one of them stands by itself, if Your Honor please. There is no other document like it in the record, and cannot be. This is the documentary record of his method of doing business at those points, which, let me say, are the points raised by the Government's own exhibit which they put in evidence. We had nothing to do with that.

Trial Examiner Norwood: Well, now, you have a good many of those cards, sufficient to acquaint the Commission with the manner of keeping the records, and so forth, and he has given you the testimony with regard to them, and that 774, that tabulation you are referring to there contains the same information.

Mr. Porter: No, Your Honor. This card has other information. It shows the price changes.

Trial Examiner Norwood: Well, you can let the witness testify to that on the stand.

Mr. Porter: Well, this card shows that we had contemporaneous documentary records.

Trial Examiner Norwood: Well, I think I shall sustain the objection. I think we have had enough.

Mr. MacIntyre: We point out that the prices contained in these cards, so far as they are commercial prices, according to the witness' testimony, have been duplicated twice already in the record, in Commission's Ex-
24153 hibit 14 and in Respondents' Exhibit 784.

Mr. Leisure: There has been no duplication of this in the record in any way. This is entirely new matter so far as the records of our company are concerned.

Trial Examiner Norwood: The objection has been sustained.

Mr. Leisure: That is what I thought. Your Honor has ruled, and there is really nothing to talk about.

By Mr. Leisure:

Q. Let me call your attention, Mr. Coogan, to Commission's Exhibit 15-G, which is another bid of your company which the Commission put in evidence. This seems to be a letting of April 30, 1936 (handing a document to the witness). That is for delivery at a town called Renovo, Pa., a quantity of 1,200 barrels, Mr. Coogan. How did you arrive at your price as shown in that Commission exhibit?

A. We quoted on this inquiry the same price that we were quoting to our commercial customers located in Renovo, Pa.

Mr. Leisure: If Your Honor pleases, I do not want to persist in a course of practice and waste time if it is just useless in having these marked. Do I understand Your Honor will not receive any more of these cards which the witness would identify as being his regular office records and would show in this documentary form where he got his price from for this bidding?

24154 I would like—

May I have this marked?

Trial Examiner Norwood: They do not show where the prices came from, do they?

Mr. Leisure: Yes, sir; that is exactly what they show.

Trial Examiner Norwood: That is data, however, to which this witness can testify on the stand, isn't it?

Mr. Leisure: Well, he can by refreshing his recollection from them, but it would be much quicker if we put them in.

Trial Examiner Norwood: The Commission has the privilege of having them put in and then cross-examine on them.

Go ahead.

I do not think I shall receive any of those cards. We have already stated the reasons for receiving a certain number, and I see no good purpose to be served by taking more and in continuing to take batches of those office cards.

The witness identified Resp. Ex. 794 as a copy of Alpha's customer's card which had been kept for Renovo, Pa.

24155 — Q. Now, can you just look at that quickly and tell us whether or not it refreshes your recollection as to whether or not when you submitted your bid you followed the prices quoted in your regular commercial business at Renovo, Pa.?

A. We did; yes, sir.

Mr. MacIntyre: The witness has just completed his testimony to the same effect. He did not need the thing to refresh his memory, or the use of the time in reference to it.

Mr. Leisure: No, but I submit, Your Honor, the record now shows we do have a documentary record, showing that the witness is telling the truth, and we are offering to put it in evidence, if we are allowed to.

Trail Examiner Norwood: What does it show?

Mr. Leisure: It shows a contemporaneous documentary record showing what their commercial price was at that time, and a number of other dates also.

I offer it in evidence.

Trial Examiner Norwood: It is similar to the other cards.

Mr. Wooden: Same objection as to other cards of 24156 the same sort.

Trial Examiner Norwood: Yes.

Objection sustained.

Mr. Porter: Your Honor, may I point out to you that the Commission has offered in evidence in this case a vast number of documents showing prices charged by Respondents at various times and conditions. These cards show the prices the Alpha Company charged at various times

and conditions. In the Commission's case those documents were received, many times over our objection, and Your Honor has now excluded those documents that we offered. I merely want the record to show that.

Trial Examiner Norwood: I am not excluding any documents except these office cards here to prove the same thing that the witness has already testified to, and it has not been denied.

Mr. Porter: Those cards show much more. They show the prices—

Trial Examiner Norwood: Yes. You will have to show me that it shows something that is relevant to the issues. You have not done it yet, and I have asked you repeatedly to do so.

Go ahead.

Mr. Leisure: If Your Honor pleases, I think I missed that. If I did as to these cards, I think it is mate-
24157 rial, from our viewpoint, to have the various prices that were charged by this company in evidence in documentary form. The Commission has put in documents showing what prices we charged in certain instances, where they have selected them, and have attempted to draw the inference that those prices were arrived at as a result of collusion. Now, I am trying to show by means of these cards that we arrived at our commercial prices in the regular course of business without reference to any other company.

Trial Examiner Norwood: Yes.

Mr. Leisure: And that is the purpose of the offer.

Trial Examiner Norwood: Well, I think this witness has already testified to that, and you have introduced numerous office record cards to show the Commission how you arrived at that, and to take more of those cards is not helping us any, and you can cover the entire subject by oral testimony of this witness.

By Mr. Leisure:

Q. Mr. Coogan, I want to call your attention to other lettings introduced in evidence in this case by the Commission involving your company.

I first wish to refer your attention to Commission's Exhibits 9 and 10. They appear to be tabulations of bids received by the Department of Highways of Virginia in June, 1936, and June, 1937.

First, let me ask you, did your company bid on these letings (handing documents to the witness)?

A. Yes, the Alpha Company submitted bids on both letings.

The witness identified Resp. Ex. 795 A as a carbon copy of Alpha's bid to the Department of Highways, State of Virginia, dated June 18, 1936; Resp. Ex. 795 B as a letter from the purchasing agent of the Department of Highways, State of Virginia stating what they estimate their requirements will be on the inquiry of June 10th; Resp. Ex. 795 C as the inquiry dated June 10th for quotations on cement; Resp. Ex. 795 D to F as the list of delivery points sent to Alpha with the Inquiry. The pencil figures are the office figures which Alpha put on in its office and then transferred in typewriting to the original bid which was submitted to the State of Virginia.

Q. And, briefly, how were your prices determined there? Is there any difference? Is it the same practice that you have described?

A. In every case that we quoted we quoted the same price that we were quoting to our commercial customers at those points.

Mr. Leisure: I offer 795-A to F (handing exhibits to Mr. Wooden).

Mr. Wooden: Your Honor may be aware that Exhibits 9 and 10 are abstracts from the original bids, which original bids were submitted at the time for checking against the abstracts, and then the original bids were returned, and they are not in evidence.

This is one of the copies, office copies of one of the original bids, as I understand it, plus some incidental correspondence.

Now, I have no objection to any of the original bids if they are offered to controvert or show something other than the abstract which is in evidence as Exhibits 9 and 10. I do object if the original bids are offered simply in confirmation and are simply in confirmation of the abstract.

Mr. Leisure: We are not attempting to confirm the abstract, we are attempting to show what our office records were, and then base questions on them.

Mr. Paulson: Your Honor, I submit what they are showing is simply this, that the Alpha Portland Cement Company keeps a record of freight rates and basing

points in numerous ways: One way, they keep up in a list of base points prices which they make up from time to time and a list of freight rates compiled in the freight rate book by the Institute. Another way, they keep it by a card index. A third way which they keep it is in their branch offices. But, at any rate, that is all that this shows, that these most strategically important quantities, freight rates, and basing points are ever before us in their sales department.

Trial Examiner Norwood: Well, Counsel objects to this because it is a copy of an original that is available.

Mr. MacIntyre: No, if Your Honor please. The objection, as I understand it—I can be corrected if my understanding is incorrect—is that it is not offered or has not been shown to have been offered by Counsel for the Respondents for any other purpose than conforming and adding to by confirmation evidence now in the record.

Trial Examiner Norwood: How about explaining?

Mr. MacIntyre: Well, he has not even stated that he has offered it for the purpose of explaining.

24161 Trial Examiner Norwood: Well, it is very apparent that he has.

Mr. MacIntyre: We do not feel that that is the purpose.

Trial Examiner Norwood: I feel that Respondent has a right to offer any of those original bids there on which the tabulation is based in order to explain his bid.

Mr. MacIntyre: If it is offered for that purpose, yes, if Your Honor please, but he has not stated that that is the purpose of his offer.

Mr. Leisure: It is very apparent that that is the purpose, it seems to me.

Trial Examiner Norwood: If Counsel objects to the copy there, unless the copy has additional data on there, why, I see no reason why it should not be received.

Mr. Leisure: Your Honor, that that is a copy, that is not quite an accurate statement. What this is, it is the record on which this company acted in making up their bid.

Now, the original bid was submitted by Mr. Wooden and then withdrawn by him, and he substituted an abstract in its place.

We are not coming in here offering copies of some original document. This is the information on which this

witness made up his bid, so that it is not a copy of
24162 anything. It is what it is.

Mr. Paulson: The witness testified to all this when he first went on the stand. The Commission put those in evidence a long time ago. It has been in evidence. All this material that he is now talking about is in evidence.

Trial Examiner Norwood: (Addressing Mr. Porter:) Did you want to say something?

Mr. Porter: I merely want to say that these are our working papers, and the bid was submitted following that. This is one of the steps in submitting the bid.

Trial Examiner Norwood: Yes.

Objection overruled. Received as marked.

(RESP. EXS. 795-A, 795-B, 795-C, 795-D, 795-E and 795-F was offered and received in evidence.)

24163

Washington, D. C.,
September 28, 1939.

24165 F. M. COOGAN thereupon resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Leisure.

Q. Mr. Coogan, when we adjourned at the last session, I had just offered in evidence Respondents' Exhibit 795-A to F. Do you know how the prices were arrived at in that exhibit?

A. The prices quoted on this inquiry are the same
24166 as we were quoting to our commercial customers at the same points at that time.

Mr. Leisure: If Your Honor pleases, I don't want to take time to mark and identify the customers' cards covering those points since Your Honor has already indicated that they would not be received in evidence. I do, however, want to make a formal offer of the cards and have a ruling covering the destination points in Exhibit 795-A to F.

Trial Examiner Norwood: Yes.

Mr. Leisure: And I want to point out to Your Honor that these cards do not alone show in documentary form that the bid was the amount of the commercial price, but they show a sequence of prices, commercial prices, which

was gone into by Mr. Wooden on direct, and they show a course of business as to prices, and for all of those reasons we feel that they should be received in evidence.

24169 Trial Examiner Norwood: But isn't the only point in issue here whether or not at those given destinations those prices were the same as their competitors? Isn't that the issue?

Mr. Leisure: I wouldn't think so; I wouldn't think that was the only issue.

Trial Examiner Norwood: Isn't that the only purpose for which they were introduced?

Mr. Leisure: I have no idea what inferences they were received for all purposes. I have no idea what in-

24170 ferences the Commission may seek to draw from those facts, but they are in evidence.

Now, it does seem to us that documentary contemporaneous records made at the time are admissible in evidence as showing what our prices were at those points, since the Government has put our bids in evidence.

Trial Examiner Norwood: Well, are any of those prices different from what the abstracts show? Do they contradict them at all?

Mr. Leisure: I am not offering them for that purpose. In fact, the witness has testified that his bids are based on his commercial prices at each of these destinations.

Trial Examiner Norwood: He hasn't controverted the showing there that these prices were as stated; that is, as far as his company is concerned these prices were as stated in the abstract. If he wants to controvert that, that is all right. If he wants to show that he bid f.o.b. mill and not some other way, or anything that is material to these issues here, that is relevant in a substantial degree, why, the cards should come in, but you haven't shown that. You haven't said that you propose to prove—

Mr. Leisure: We think that they are material.—

Trial Examiner Norwood: The mere detail of a price sequence is entirely irrelevant to this case. This

24171 isn't cross-examination. You are supposed to be putting in evidence that throws some light on the issues here. That doesn't.

Mr. Leisure: I merely want to point out the reasons that we believe they should be admitted. We believe that they should be admitted:

1. Because they are regular records kept in the regu-

lar course of business contemporaneous with the time of the Government exhibits; namely, the destination prices, and we feel that we should be able to put those records in to draw whatever inferences we may want to draw from them in the future.

Mr. Leisure: We expect to argue from these records that having based them on our commercial prices,
24172 that we did not enter into any collusion as to the bids that we put in evidence.

Trial Examiner Norwood: Does that follow at all?

Mr. Leisure: Well, that is our position. I can't say that it follows but that is our position.

II. We feel that these cards do not alone negative this proof the Government has put in, but we feel that they show a sequence of prices which is material and relevant in this case because the Commission has already gone into that feature of the case as to the commercial prices, and they have, for instance, alleged that the prices were rigid and they have sought to draw the inference from that that it showed monopoly or collusion. Now, these prices, we contend, will show that they aren't unduly rigid. They are rigid in the way that all commodities of a similar character are rigid. Those contemporaneous records show that.

Trial Examiner Norwood: They do show price variations over periods of time?

Mr. Leisure: Yes, sir. Yes, sir.

III. Your Honor will recall the Commission called a mathematician and he took the Commission's similar bids which had been offered, these very bids that we are talking about. He based his testimony on them and said that
in his opinion the chance of them coming out the
24173 same by accident was one in about ten billion, or whatever he used. He used the stars, as Your Honor remembers.

Trial Examiner Norwood: From here to the moon.

Mr. Leisure: Now, this bears directly on that as negativing that testimony.

Trial Examiner Norwood: It is your contention—

Mr. Leisure: We didn't come at it by the stars at all. We came at it by the regular course of business over a period of years of selling cement, all the cement we could at the best prices we could, wherever we could, and these are the records that show we did that.

24174 Trial Examiner Norwood: I never insist on Counsel's making a proffer unless its relevancy does not appear to me; but at any time during the proceeding I consider that I have a right to make the request of Counsel. I have had Counsel on one side or the other try to force the other Counsel to disclose its theory there.

Mr. Wooden: I have been required to do so, too.

Trial Examiner Norwood: I have asked them when it was not clear to me; though at this stage of the game the issues are much clearer, so I think that it is more incumbent upon Counsel, on both sides, from this stage on, to make it clear to the Examiner that what he is offering is relevant.

24177 Trial Examiner Norwood: Does that include the cards that I rejected yesterday, that had already been marked?

Mr. Werle: No.

Trial Examiner Norwood: Respondents' Exhibits 785 to 793, and 794?

24178 Mr. Leisure: No, Your Honor, that does not; but, should they be received we assume Your Honor would allow us to offer these cards in evidence also.

Mr. Paulson: The Commission does not dispute that they kept customers' cards, and that is all they can prove.

Trial Examiner Norwood: He claims these cards show price variations.

Mr. MacIntyre: He has not yet secured from the witness that these cards do, in fact, show the price variations that he has claimed. They may only show that a delivered price is noted different from the preceding one, because of the intervening freight rate change, and not as mill or base price change.

Let us know what the facts are.

Trial Examiner Norwood: I do not see the harm, if you make it in one offer.

Mr. Leisure: That is what I am suggesting.

Trial Examiner Norwood: I do not see the harm in taking them in for study if you make it in one offer. They either show what he says they show, or else they do not, and we are making an exhaustive study of this, and it continually comes up, and I think we have spent more time discussing it than if we had taken them in.

Mr. Wooden: It is important as a matter of prec-
24179 edent,—it is not merely this particular instance.

Trial Examiner Norwood: It is not to be a precedent.

Mr. Leisure: I wish we would stop talking about precedent. We waste so much time on that subject. There is nothing before Your Honor when someone warns you of what is going to happen in the future —.

Trial Examiner Norwood: Precedents are important.

Mr. Leisure: —and we can cross those bridges when we come to them.

Trial Examiner Norwood: Have these cards been numbered?

Mr. Leisure: They have not been marked, no.

Trial Examiner Norwood: I shall reverse the ruling of yesterday, and receive Respondents' Exhibits 785, 786, 787, 788, 789, 790, 791, 792, 793, and 794 in evidence.

(The cards referred to, heretofore marked for identification "Respondents' Exhibits 785, 786, 787, 788, 789, 790, 791, 792, 793, and 794, were received in evidence.)

Mr. Leisure: And I would also like to tender at this time certain cards.

Trial Examiner Norwood: You can tender those during the noon hour, or some time when the Reporters have time to number them.

24180 Mr. Leisure: Very good.

Trial Examiner Norwood: Not to take the time now.

Mr. Leisure: May I offer them and let them be marked later, or do you want them merely marked now.

Trial Examiner Norwood: Better let them be marked now.

Mr. Leisure: All right.

Trial Examiner Norwood: That is, with the understanding there is going to be no prolonged examination about each and every one of these cards.

(The cards referred to were thereupon marked for identification "Respondents' Exhibits 796-A to 796-Z-63, inclusive.)

24181 Q. Well, let me now call your attention to another Commission's exhibit, bearing the number 1339 (indicating).

I may say here, Mr. Coögan, that I am taking up another subject matter.

This exhibit is an invitation, proposals on cement issued March 30, 1938, by the Procurement Division.

Did your company receive proposals on that letting (handing document to witness)?

A. Yes, we received such a proposal.

Q. Did you submit a bid?

A. We did not submit any bid.

Q. Why not, Mr. Coogan?

A. Well, there are a great many reasons why we did not. First, we did not feel that the inquiry was made in good faith, and there were certain conditions in the inquiry which our company, after consultation among our executives, decided that it would be unwise for the Alpha Company to make any bid on such a blanket inquiry.

Now, I can go through the conditions as set out in this inquiry and point out, in each instance, the impracticability from the standpoint of our company of making
24182 any quotations.

Q. Well, I would rather you would not take time to do that, Mr. Coogan.

Just tell us as briefly as you can the reasons that actuated your action in causing you not to submit a bid.

A. Well, in the first place, the bid asked for f.o.b. mill prices, and that bears the statement that the bids will be canvassed upon the mill price plus the transportation to the point of destination. In other words, they asked for the bids on one basis, and state right in the bid that they will canvass them on an entirely different basis.

The inquiry plainly states that the Procurement Division will not undertake to furnish bidders an estimate of the quantity to be purchased from the successful bidders during the four months' contract period. In other words, they asked for an option on any and all cement that they might want, but they don't obligate themselves to take a barrel of it, if they don't want it.

Q. Well, let me ask you, Mr. Coogan? Under your regular specific job contract, you have said already that you give the purchaser an option on all the cement he will require. What is your practice? What is the difference if you make a contract for, say, 50,000 barrels to the Government on this invitation, and on a contract with a private contractor for the same amount by your customer's specific job contract.

24183 A. I didn't say that we gave our customers an option.

Q. That is what I want you to explain.

A. We enter into a specific job contract with our customer, but at the time we enter into that contract we know the destination of the cement, we know the amount of cement which will be involved in a particular work which he has under way, and we know very well that we will ship, after we get the contract, on that particular job, about the quantity of cement mentioned in the contract, not always the exact quantity, of course, it is subject to variation, but here it asks for bids on a large quantity without any obligation on the part of the Government to take a single barrel.

Q. Now, I interrupted you—would you go on and tell us briefly your reason for not bidding?

A. Furthermore, it provides that the Government could purchase cement under this contract, and furnish it to all people and agencies using cement, on our supplying cement to projects the construction of which is provided for by contract, or otherwise, subsequent to date of this contract, and which are financed in whole or in part by the Federal Government at prices not in excess of those stated in the bid.

Now, we could not possibly enter into a contract like that. We have our dealer connections, which are really more important to us than our Government connections, and we must protect that class of trade, and we do
24184 make every attempt to protect that class of trade.

We felt that this whole inquiry was not made in good faith. In fact, we looked at it as an entrapment in this case, and we decided, in our own organization, to make no bid whatever, or, to write no letters, or to say anything about it.

Q. Well, when you received the invitation, did you have any conversation of any kind with any of your competitors?—

A. No, sir.

Q. —as to what you were going to do?

A. No, sir; I did not. We made up our minds that we would not, under any circumstances, make any bid on an inquiry of that kind.

Q. Let me ask you further on that: Was the action that you took based, in whole or in part, in anticipation of anything that you had talked to your competitors about, or did you have any such conversation?

A. No, I had no conversation whatever of any kind with my competitors relative to this inquiry.

Q. What did you do when you did not bid? Did you send any letter to the procurement division?

A. No, sir; we sent no letter—or made no response to the inquiry.

24185 The witness identified Resp. Exs. 797-A and B as a letter from Alpha's dealer connection at New
24186 Haven, Conn. dated April 22, 1938, which came to Alpha in the ordinary course of business through the mails; Resp. Ex. 798 as a copy of Alpha's reply, dated April 23, 1938, to that letter (Resp. Ex. 797-A and B.)

24187 Q. Mr. Coogan, will you explain your participation in that letter?

A. No, this letter was written under my direction by the secretary of our company and copies of it were sent to our Boston office and to our two salesmen covering the State of Connecticut in which this dealer was located.

Trial Examiner Norwood: Well, do you testify as to the truth of the statements contained in it?

The Witness: I do, because it is written under my direction.

(RESP. EXS. 797-A, 797-B, and 798 were offered
24188 and received in evidence.)

Q. Mr. Coogan, can you identify Respondents' Exhibit 799-A and B, and 800, for identification?

A. Respondents' Exhibit 799-A and B is a copy of a letter writen under my instructions, dated April 27, 1938, addressed to our dealer at Norwich, Conn.

Respondents' Exhibit 800 is an original letter acknowledging receipt of this letter from our customer at Norwich, Conn., dated April 28, 1938.

24189 (RESP. EXS. 799-A, 799-B, and 800 were offered
24190 and received in evidence.)

Q. Mr. Coogan, did you find what your dealer reaction was to this?

A. Yes, we got a great deal of dealer reaction both direct from our dealers, some of it in writing, a great deal of it by telephone, and in conversations with our salesmen in various districts.

Q. Well, did you become aware of your dealer attitude generally, or was it just isolated instances?

A. No, we became acquainted with our dealer attitude quite generally.

Trial Examiner Norwood: Does that letter indicate what you are talking about there?

24191 Mr. Leisure: Yes, sir.

Trial Examiner Norwood: Attitude of what?

The Witness: About the Good Friday bid, as we referred to it in our own company.

Mr. Werle: Commission's Exhibit 1339.

By Mr. Leisure:

Q. As I understand it, you say these letters are typical of your dealer reaction?

A. Yes, they are, some by letter and some verbally.

Q. What is your practice, Mr. Coogan? Are you interested at all in your dealer reaction in matters of that kind?

A. Yes, we are very much interested in our dealer reaction. They form the backbone and the principal part of our trade. I want to state that we did not discuss the matter of this bid with dealers, and you will notice that the reaction came after we had made our own decision. In other words, it was dated subsequent to the opening of the bids.

Q. Well, then, after March 30, 1938, after the invitation, Commission's Exhibit 1339, after this did you receive any further invitations to bid f.o.b. mill on the various projects?

A. Yes, there were subsequent invitations issued which were issued for supplying cement in certain sections of the country.

Q. Let me call your attention to Commission's

24192 Exhibits 1392 and 1399, and I now ask you whether those are the invitations to which you have just referred?

A. Yes, these are the invitations to which I referred issued in the territory where we do business.

Q. Did you bid on either of those, Mr. Coogan?

A. No, we did not.

Q. Why not, Mr. Coogan?

A. Because we could not bid on them and follow through the protection which our company felt should be given to our dealers, and while in these inquiries they had removed some of the objectionable features contained in their original inquiry they had not by any means removed them all, and we declined to quote on it.

Q. Did you have an opportunity to observe what the attitude of your dealers were with respect to this situation also?

A. Well, of course, during the time that the original bids were opened, which I think was April 15th, and these bids were not opened until May 18th, we got a great deal of dealer reaction to these governmental inquiries.

Q. I think I neglected to ask you just how these proposals upset your dealer relationships. You said that they did; I didn't ask you how.

A. Well, there is a certain kind of business that we handle through our dealers, and in this particular case we couldn't tell what the cement was to be used for, what point it was to be shipped to, or anything else
24193 about it, and, as I remember it, again these bids asked for a mill price but stated that they would be canvassed on the cost at destination. Now, we had no means—

Trial Examiner Norwood: He is asking you about the dealers simply; how it affected your dealer business.

The Witness: Well, I answered that.

Q. Mr. Coogan, in leaving those, were there any additional objections that obtained as to these proposals other than the ones that you have told us about as to the first proposal?

A. No, they had removed some of the objections which we had to the first proposal, but not all of them, and we declined to quote on either inquiry.

Q. Now, in all of this long experience you have had in selling cement to the Government, was this a usual or an unusual form, I mean for the Government to confine its invitation to f.o.b. mill prices?

24194 A. All of the inquiries which we have been discussing were very unusual.

Q. Take the instances where you have sold to the Government in the past, I mean where the Government has asked for f.o.b. mill bids in order to take advantage of land-grant or special rates. Have you quoted that way?

A. We have always tried to quote in a manner that would give the Government the opportunity of getting any benefits which might accrue to them under the land-grant rates.

Q. What has been your experience as a result of that

practice followed by you when the Government has received f.o.b. mill prices? Has it made its award on the basis of the f.o.b. mill prices?

A. No, my observation has been that the Government has made the awards on the basis of the laid-down cost at the destination.

Q. Let's go on to something else.

In all of these cases of these bids, Mr. Coogan, without spending an unnecessary amount of time on it, did you have any communications of any kind with your competitors as to any of the prices that you would bid on any of these lettings that we have been discussing?

A. No, we have had no conversation with them. Of course, on the three particular lettings we did not submit any bid, but we had no conversations of any kind.

24195 Trial Examiner Norwood: He said communications.

The Witness: Or communications or conversations of any kind with any of your competitors regarding this or any other bid.

By Mr. Leisure:

Q. So that my question will not be limited in any way, I want to know whether you had any contact with your competitors with respect to your bids to the United States Government, or on these other bids that we have been talking about, or as to these other bids that we have been talking about? Did your have conversations or communications with them before you made the bid at any time?

A. No, I think that, in one during the Code period, I think that there were some dealings with the T. V. A. It is not altogether clear in my mind just what that was, but that is the only occasion that I know of.

Q. Now, you have told us that your company quotes to the Government its commercial price except where land-grant rates are involved. I think you said in the latter case you quote the Government or give them the benefit of the land-grant rate. Just how do you determine the applicable land-grand rate in those instances, Mr. Coogan?

A. Well, we determine the land-grant rate from information which we get from the carriers serving our mills,

24196 who have the tariffs and the division sheets, and who have the land-grant rules, and who are able to figure out the land-grant rates and furnish them to us.

Q. Are you able to get the correct land-grant rates from the railroads in that manner?

A. Well, generally speaking, I should say yes, but there is a great deal of difference in personalities in figuring land-grant rates, and sometimes you will find variations. It has been my observation that sometimes the railroads are right, and sometimes the Government is right, and I don't think that anybody is right all the time, although, generally speaking, we have had not much difficulty in securing the proper land-grant rates. As a matter of fact, anybody who knows the land-grant figures, and who has access to a division sheet of the carriers' rates can quite intelligently figure out the land-grant rate which is applicable.

Q. What is your practice? Do you make any independent computation of the land-grant rates, or do you take the figures which the railroads give you, Mr. Coogan?

A. We take the figures that the railroads give us.

Q. Now, as to getting these figures from the railroads, what has been your experience? Have the railroads been reluctant to give you the full information about land-grant rates which they possess?

A. They have no hesitation whatever in giving us all of the information that they can.

24197 Q. To what extent, if any, do you check with competitors concerning land-grant rates which might be applicable to a pending Government letting?

A. We don't check land-grant rates with our competitors. During the Code period, of course, there was a time when land-grant rate information was circulated to members of The Cement Institute, but we don't check with competitors.

Q. When you do have a problem involving the land-grant rates, what is your practice? Is it or is it not necessary for you to change your billing and invoicing of shipments on sales to the Government where the land-grant rates are involved?

A. No, we have quoted the Government during my experience in many different ways where land-grant rates are involved. At times we have figured up what the destination cost was using land-grant rates and deducted the land-grant rate from our mill quoting the resulting figure as a mill price. In other cases we have quoted a destination cost and stated the amount that they could deduct

from our stated price in order to arrive at a mill price and move the shipment on a Government bill-of-lading. During the Code period we quoted a destination cost and after the control clause had been filed by one of our competitors, we used the control clause. Recently and since the Code period we have in many cases quoted f.o.b. mill, and still more recently we have quoted them under an equalization clause which was first brought out in
24198 the latter part of '38 by the Department of Agriculture.

Q. Now, as to this billing and invoicing that you have described, what is your regular practice where land-grant rates are involved? Do you bill them title passing at the point of shipment or at destination?

A. No, at point of shipment.

Q. What has been your observation, if anything, as to the effect that that has had where the land-grant rates were involved?

A. Well, that enables them—

Q. The manner in which you quote your price.

A. Well, of course, we quoted our price in a way that they could make the computation and arrive at a mill price, and after they arrive at that mill price they settle with us on that mill price and then move the shipment on a Government bill-of-lading.

Q. How did you quote to the Government, prior to the N. R. A. Code, Mr. Coogan?

A. We quoted in various ways. Sometimes we arrived at a mill price by using our land-grant rates, and deducting the land-grant rate from our mill. In other cases, we stated that they should deduct a stated amount from
24199 our f.o.b. destination cost, and then during the N. R. A. days we—after a competitor had filed a control clause—we quoted a destination cost and used a control clause.

Since that time we have quoted in many different ways.

Q. Now, when land-grant rates were involved, when you furnished the Government with a land-grant rate to be deducted, was that stated by your company exactly in dollars and cents, or how did you arrive at it?

A. No, we stated it in cents per barrel.

Q. You are speaking of what period of time now?

A. I am speaking of the period prior to the Code.

Q. There has been considerable testimony about this

so-called control clause, and you have also mentioned it in your testimony. What was the control clause that you have reference to?

A. The control clause that I had reference to was a control clause that was filed during the N. R. A., and, after studying that clause, it was our feeling that it gave the Government the full benefit of any land-grant or special rate, and we adopted it as our policy, and followed it, during the Code.

Q. Well, as to your own observation with respect to your own company, from your own experience, Mr. Coogan, quoting the Government, and observing the prices paid by the Government, can you tell us whether or not the Government was deprived of the full benefit of the
24200 land-grant rates when you used this control clause?

A. In the case of our own company, whenever we quoted the Government, or sold the Government directly, we always made every effort to quote them, and to bid them, in such a way that they could secure the benefits of land-grant rates.

Q. Have you told us, Mr. Coogan, the circumstances under which your company first took up the use of this control clause?

A. Well, I said it had been filed as a term of sale by one of our competitors during the Code period, and we then filed it ourselves shortly after that, as one of our terms.

Q. Well, now, at the time that you adopted the use of it, did you have any conversations, or agreements, with any of your competitors as to whether or not your company would, or would not, use such a clause?

A. No, sir; we did not.

Q. About the Code period, during the operation of the Code, could you tell us, prior to submitting your bids on a given Government invitation, whether or not other competitors intended using that control clause, Mr. Coogan?

A. No, during the Code period, of course, all prices were filed, and we had the opportunity of knowing the lowest price filed of any particular destination.

Now, as to whether all or any of our competitors would use the control clause, we did not know.

24201 Q. Wasn't that filed, Mr. Coogan?

A. Yes, it was filed as a term of sale.

Q. Would you know, then, from that?

A. Well, yes, I was mistaken there—of course, if it is filed as a term of sale you would be obligated to live up to it.

Q. Well, after this open price filing ceased, and you no longer could tell what a competitor intended to do, did you continue to use the control clause?

A. Our own company did continue to use the control clause for some time after the Code period.

Q. After the Schechter decision, Mr. Coogan, and after the Code period, for the period of time thereafter which has frequently been referred to here as an interim period,—during that period did you consult with any of your competitors as to whether or not either you or they were
24202 going to use the control clause, or quote the same way?

A. No, sir.

Q. And I do not want to limit that question to the interim period,—have you ever had any such understandings, or conversations, or agreements with your competitors with respect to the control clause at any time?

A. No, sir; I have not.

Q. And I did not mean to exclude the N. R. A. period in that question. I don't know whether your answer intended to exclude it or not?

A. No, sir; it was made public, of course, when it was filed by a competitor during the N. R. A. period; but we had no conversations before that time.

Q. What I meant was, had there been any such understanding, even, during the N. R. A. period?

A. No, during the N. R. A. period any of us were—could file any terms, or policies, or prices that we saw fit to make.

Q. I would like to take up now, Mr. Coogan, certain invitations that have been received by your company in recent months.

You said that you declined to bid on those we discussed this morning that were issued by the Procurement Division in 1938.

Since that time has the Alpha Company received invitations to quote f.o.b. mill from the Federal Government?

24203 A. Yes, we have received some inquiries asking for f.o.b. mill prices and others asking for alternate prices.

Q. What departments, if you recall, of the Federal Government have these invitations been received from?

A. Well, we have received them from many different departments—the War Department, the Agricultural Department, the Treasury Department.

Q. Has your company submitted bids on any of these?

A. Yes, we have submitted bids on many of them.

Q. What kind of bids,—were they straight f.o.b. mill bids?

A. In some cases we quoted straight f.o.b. mill bids, in other cases we gave them alternate bids and—

Q. Well—excuse me.

A. (Resumed) —and in some cases we have quoted them destination prices with a formula stated on our bid as to how they could arrive at the mill prices.

24204 Q. Mr. Coogan, in the instances where you have quoted f.o.b. mill price; have you or have you not used the so-called control clause which you say you have used during the N.R.A. period and for a while thereafter?

A. No, on those inquiries we did not use the so-called control clause.

Q. Do you know, without your records, Mr. Coogan, when the last time was that your company quoted to the United States Government with the use of this control clause?

A. No, I wouldn't have the date without conferring on it with our records.

Q. Well, let us see if we can arrive at it this way. Let me ask you,—has the Alpha Company, for the present, at least, has it or has it not abandoned the use of

24205 the control clause?

A. At the present time we have abandoned the use of the control clause.

Q. Have you used any other provision in its place, or anything similar to a control clause?

24206 A. Yes, we have been using what we call an equalization clause, which was first brought out on an inquiry by the Department of Agriculture some time in 1938.

Trial Examiner Norwood: Now, when have you used it?

The Witness: We have been using that recently on practically everything that we have made to the Government.

By Mr. Leisure:

Q. Well, now, in those instances, Mr. Coogan, when you quote with the use of this equalization clause, as you have described it, do you state a flat f.o.b. mill quotation, or do you give the Government some figure from which it may determine the f.o.b. mill price?

A. That depends on the inquiry.

24208 A. If the inquiry asks for a flat f.o.b. mill price, we give them such a price. If it asks for an alternate of an f.o.b. mill price, or a destination price, we give them both.

24209 Q. Mr. Coogan, I show you Respondents' Exhibit 801-A to I, and ask you to state what it is (indicating).

24210 A. Respondents' Exhibit 801-A to I is an invitation from the Department of Agriculture, dated November 26, 1938, with an inquiry for cement for delivery at Haleyville, Ala., and it is our office copy of the bid submitted in response to that invitation.

Q. Does it contain the equalization clause which you have just told us about?

A. Yes, this invitation contains the equalization clause as sent out by the Department of Agriculture, and on which our company bid, and used the same wording that they have. Since that time we have changed—

Trial Examiner Norwood: Well, just answer his question.

By Mr. Leisure:

Q. Does it contain a complete copy of your bid in this invitation?

A. Yes.

Q. I notice there are certain pencil writing on the face of the document. Can you identify them?

A. That is a copy of our bid, or office copy of the bid.

Q. Well, as to the pencil part, do you fill in the pencil figures on the invitation?

A. In this particular case they are filled in in my own figures, because we handled this by telephone, and I gave instructions to the Birmingham office how to handle

24211 it, and what figures to insert, and what terms, and at the same time I telephoned it I filled in the form which we had in our office.

24212 Mr. Porter: Your Honor, may I just make one suggestion? The Government has put in a great lot of bids where prices and bids were identical. This happens to have been a bid where, according to the opening of bids we received, the Alpha bid was materially different from that of its competitors. We can't show what the others bid now; we can merely show what the Alpha bid was, but we can't do it all at once. We have got to take it witness by witness. When this case is through—

Trial Examiner Norwood: Let's just talk about this exhibit.

Mr. Porter: Well, this exhibit shows what we did. Subsequent witnesses will show—

Trial Examiner Norwood: What you did after this proceeding was started?

24213 Mr. Porter: Surely. But the Government put in a lot of evidence, a lot of witnesses as to things after this proceeding started where the bids were identical. Now we are going to show a bid where it is different.

24217 (RESP. EX. 801-A to 801-I was offered and received in evidence.)

24218 By Mr. Leisure:

Q. Mr. Coogan, according to this invitation, Respondents' Exhibit 801-A to I, there is a price requested f.o.b. Haleyville, Ala., and a price f.o.b. bidder's shipping point, and it also appears that you quoted .5775 per sack, f.o.b. Haleyville. I understood you to say a moment ago that you gave the Government an f.o.b. mill price in this invitation. What is your explanation?

A. I said in some invitations, where it was requested, we had given both f.o.b. mill prices and f.o.b. destination prices. Now, in this particular case, this was the first inquiry that we received under this so-called equalization clause instituted by this department, and if you will observe the bid, while it shows a price f.o.b. Haleyville, later on in the bid it states the weight of the shipment. It shows the commercial rate from our mill to that point of destination and tells the Government that they can deduct that commercial rate from this bid price in order to arrive at a mill price and ship on Government bills-of-lading, and it further provides that it is subject to a still further reduction representing the greatest difference between the com-

mercial rates and the land-grant rates of any bidder
24819 quoting on this particular proposal.

Q. From what you have just said, I am not clear whether you put the qualifications in or whether they were in the invitation.

A. No, they were printed in the invitation.

Q. Let me call your attention to the part marked "Type 1" on the exhibit. I want to ask you whether that is the equalization clause to which you have referred to.

24220 A. The equalization clause appears on page 8.

Q. Now, what were the circumstances under which you used the equalization clause in that letting, Mr. Coogan? What was your understanding of the effect and what were the circumstances as to your using it there?

A. We quoted under the equalization clause because it had been inserted as part of the invitation, and it was our feeling that this equalization clause gave to the Government not only the full benefit of the land-grant rate from our own mill but gave them the full benefit of the greatest difference existing between the commercial rate and the land-grant rate.

Trial Examiner Norwood: Well, that is just what it says, isn't it? There is no use of explaining what that paper says.

The Witness: Well, I don't think—no, it doesn't say that.

24224 Q. Mr. Coogan, I show you Respondents' Exhibit 802, for identification, and ask you to tell what it is.

A. Respondents' Exhibit 802-A to F is an invitation to bid, dated August 17, 1939, for delivery of cement at Jackson, Tenn.

Q. What, if anything, did you have to do with that bid, Mr. Coogan?

A. This bid was handled by our Chicago office, and I gave them instructions over the telephone how to handle it.

24230 (RESP. EX. 802-A to 802-F was offered and received in evidence.)

2431 Q. You have told us, Mr. Coogan, that it was against the policy of the Alpha Company to quote f.o.b. mill, and that you had not submitted bids in this 1939 procurement—as to this 1938 Procurement Division invi-

tation because of certain things which you have described. Why it is that you quoted f.o.b. mill prices on this invitation to the Department of Agriculture?

A. Because, in the first place, this first invitation from the Department of Agriculture contained an equalization clause. We were anxious to try to work out some method of quoting which would be acceptable to the Government, and this particular inquiry, of course, goes much further than the other inquiries that we have been talking about, because it specifies the particular destination at which the cement is to be shipped whereas the previous inquiries did not; and of course, there were other objections in addition to that, to the previous inquiries.

Q. Well, does this f.o.b. mill bid represent any change in your company policy with respect to quoting f.o.b. mill prices?

A. Yes, it is a change in our policy in an effort to try to meet the wishes of the Government departments.

24232. Q. Was there competition with these bids, Mr. Coogan? Did other companies submit bids also?

A. Well, of course, on this particular letting covered by the last exhibit we don't know how many submitted bids because those particular bids were not opened. There had, however, been a previous invitation, and that those bids had just been discovered at that time, and we have no direct information as to who quoted or what was quoted.

Q. What was your experience with respect to your competitors, if anything, Mr. Coogan, prior to these bids? Had your observation informed you as to what they were doing?

A. No, I don't—so far as I know, I couldn't find where they had used the equalization clause. I believe, on some later bids, some of them did use the equalization clause; but I have no direct knowledge as to what each of them did, except in so far as the reports of the bids that we get are concerned.

Q. Well, passing that for the moment.

You have told us, Mr. Coogan, that your competition is at the market, or the place where the cement is used, and that it is impossible for you to meet it except at that point. How do you explain your action with respect to this change of policy that you are telling us about?

A. It is the feeling of our company that with the use

of that equalization clause that it does enable us to meet the prices at the particular destination referred to.

24233 Q. Well, what has been your experience,—does this method of quoting f.o.b. mill prices result in varying f.o.b. mill prices on different bids?

A. It has in some cases.

Q. Now, again, as to your observations and experience,—on the basis of these fixed and inflexible f.o.b. mill prices in marketing cement, have you observed whether or not you are able to quote the Government in this fashion—in order to meet competition are you able to meet it in that way?

A. It is the feeling of our company that if he could canvass the bids submitted by us properly, that it would enable us to meet the competition at any given destination. Some of the departments canvass the bids in that way; others do not.

Q. And with a fixed inflexible mill price, can you do that?

A. No, sir; we cannot.

Trial Examiner Norwood: Could you do it with a uniform mill price; that is, uniform on any one date?

The Witness: No, sir; we couldn't under any possibility meet the competition, the way the Government canvassed the bids, by an inflexible mill price.

24234 By Mr. Leisure:

Q. Mr. Coogan, I show you Respondents' Exhibit 803-A to P, for identification, and ask you to explain what it is, please (handing document to witness).

A. Respondents' Exhibit 803-A to P is an invitation to bid from the construction quartermaster, Fort Bragg, N. C., dated August 8, 1939.

Q. Does it contain the file copy of the bids submitted by the Alpha Company?

A. Yes, sir; that is our office copy of the bid which we submitted.

Q. Did you take any part in the submission of that bid?

A. I did. I instructed the office how to quote on this particular business.

Q. You mean at your Easton office?

24235 A. The Easton office.

(RESP. EX. 803-A to 803-P, inclusive was offered and received in evidence.)

Q. Mr. Coogan, according to this exhibit, Respondents' Exhibit 803, the Government asked for a price f.o.b. shipping point and a price f.o.b. destination, and it ap-
24236 pears that you bid $1.46 per barrel f.o.b. shipping point and $2.41 f.o.b. destination. Was that $1.46 a flat f.o.b. mill price?

24237 A. It is a flat mill price subject to a still further reduction if the Government wishes to avail themselves of the equalization clause which is attached to that bid by rider.

By Mr. Leisure:

Q. Now, as to the rider, Respondents' Exhibit 803-K, will you tell us whether or not that is the equalization clause you have adopted in your bids to the United States Government?

24238 A. 803-K shows the equalization clause which is being used by the Alpha Portland Cement Company.

Q. Mr. Coogan, with reference to Exhibit 803, do you know how you arrived at the price you quoted in this invitation?

A. The price quoted by us f.o.b. Fort Bragg is the price that we were currently quoting to our commercial trade at that time, and the price which we quoted f.o.b. mill was that price with the commercial freight rate from our mill to Fort Bragg deducted.

Q. Mr. Coogan, I show you Respondents' Exhibit 804, for identification, and ask you if you can identify it.

24239 A. Respondents' Exhibit 804 is a report from our salesman in North Carolina dated August 14, 1939, giving us a copy of the tabulation of the bids made by the constructing quartermaster on the bids previously referred to.

Q. What are the figures on the righthand side of that page, Mr. Coogan?

A. The figures in the last righthand column represents the price which the constructing quartermaster figured that that cement would cost the Government delivered at Fort Bragg as quoted by the various bidders.

Q. Mr. Coogan, I ask you whether or not you know—whether you do know whether any of your competi-
24240 tors used the equalization clause in that instance?

A. Yes, there were two other companies.

24241 Q. Who were they?

A. Universal Atlas and Penn-Dixie.

24244 (RESP. EX. 804 was offered and received in evidence.)

24245 Q. Mr. Coogan, in the extreme righthand column the word "award" is written at the top of the page, and there appears after that a cross opposite the name "Alpha Company," and a check opposite the name "Standard Lime & Stone Company." (Handing document to witness.) Do you know what that is?

A. The "X" back of the Alpha bid was put on there simply to designate the bid of our own company. The check mark under "Bidder No. 10 Standard Lime & Stone Company" is explained in the body of the exhibit, showing that the business was awarded to the Standard Lime & Stone Company, Martinsburg, W. Va."

24247 Q. Mr. Coogan, I show you Respondents' Exhibits 805 to 808, inclusive, and ask you if you can identify them (handing documents to witness)?

A. Respondents' Exhibit 805 is a copy of a letter written by me, dated August 21, 1939, addressed to the contracting officer, Fort Bragg, N. C.

Respondents' Exhibit 807 is a carbon copy of a letter dated August 28, written by me to the quartermaster, Fort Bragg, N. C.

Respondents' Exhibit 806-A and B is a letter addressed to me from the constructing quartermaster, Fort Bragg, dated August 25, 1939.

Respondents' Exhibit 808 is a letter from the constructing quartermaster, Fort Bragg, dated September 7, 1939.

Q. Was there any award made on this letting, to your knowledge, Mr. Coogan?

A. Yes, there was an original award made to the Standard Lime & Stone Company.

24248 (RESP. EXS. 805, 806-A, 806-B, 807 and 808 were offered and received in evidence:)

By Mr. Leisure:

Q. Mr. Coogan, in this Respondents' Exhibit 804 I note that the price to the Government on a Government bill-of-lading delivered from the Alpha Company is $2.41 per barrel; whereas, on Respondents' Exhibit 805 the delivered price to the Government on your bid is stated at $2.41, and the letter indicates that it was $2.353532 per barrel.

What have you to say to that (handing documents to witness),—if anything, Mr. Coogan?

A. In the way the bids were originally canvassed by the Government, they showed our destination cost as
24249 $2.41 per barrel. In the letter which I wrote to them, and using the land-grant rate which I had secured from the railroad, we figured the destination cost as 2.353532. In Exhibit 808, a letter from the quartermaster general at Fort Bragg, he uses another land-grant rate and makes the destination cost to us based on the rates then in his possession as 2.303 per barrel. Now, he doesn't state in arriving at that whether he has taken into consideration the equalization clause which was attached to our bid or not, but he does say that he canvassed the bid at 2.303 per barrel instead of 2.41 as it was originally canvassed.

24250 Q. Mr. Coogan, are you telling us what information you took action upon? Is that the purport of your answer?

A. I am telling what information I took action on, but also the Respondents' Exhibit 806-A and B states clearly on what freight rate they had used in canvassing our bid.

24251 Q. What has been your observations? Has the procurement division given effect to your equalization clause where you have used it?

A. No. In canvassing the bids, they have not given consideration to our equalization clause; where the application of the equalization clause or our mill price is lower, they have in one case awarded us the business and after the business was awarded they have applied the equalization clause.

24252 Q. I show you Respondents' Exhibit 809, for identification, and ask you if you can identify it.

A. Respondents' Exhibit 809 is a letter addressed to me from our Birmingham office dated July 28, 1939, confirming telephone instructions from me for them to telegraph an objection to the Procurement Division.

24257 (RESP. EX. 809 was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, are you personally familiar with the circumstances relating to Alpha's bids to the U. S. Engineers for the Tygart Valley project in January and February of 1935?

A. Yes, I handled those bids personally.

Q. Now, I want to call your attention to the evidence with respect to that offered by the Commission concerning your company, bearing Exhibit No. 178-A to Q. What, if anything, was your participation in that matter, Mr. Coogan?

A. We submitted bids for the Alpha Company.

Q. Well, give us the circumstances. Before you submitted the bids, what was your action?

A. The first inquiry we had was information from the Engineers' office at Pittsburgh, that they were going to be in the market for a large quantity of cement for the Tygart River Reservoir at Grafton, W. Va., and
24258 the question of specifications was involved. We had our technical man go to the Engineers' office and furnish them with what technical information they wanted with regard to tests, and so forth. Shortly after that there was an inquiry sent out for a mill, 200,000 barrels of cement for that particular job. When we received that inquiry in the Easton office, the executives of our company conferred and we decided on what price we would quote on that business. That was during the Code period and we—after arriving at our decision as to what to quote, we filed that price with the Code Authority. Now, the price which we quoted on the first letting followed a pattern which had been laid down by the T.V.A. in some purchases that they had previously made, and we applied that principle in arriving at what price we would quote on this inquiry.

Q. Do you know what the lowest freightwise mills were to Tygart?

A. The lowest freightwise mill to Tygart Valley was our mill at Manheim, W. Va., and the second lowest was the Universal plant at Pittsburgh.

Q. Have you told us what you did quote to the Government?

A. No, I haven't.

Q. What did you quote?

A. On the first inquiry we quoted $1.84 per barrel in bulk delivered at Grafton.

24259 Q. Do you know how the $1.84 was made up?

A. No. We took the same pattern that the T.V.A. had laid down of applying $1.30 per barrel from the second lowest freight wise mill, the freight rate from

Manheim being 30 cents per barrel, the freight rate from the Universal Mill was 44 cents per barrel. So we took $1.30 at Universal, added the freight rate of 44 cents and the cash discount of 10 cents, and arrived at the price of $1.84, which we filed with the Code Authority and quoted on the first letting.

Q. Now, you say you filed it with the Code Authority. What happened on the opening of the bids?

A. Well, after the bids were opened, the Engineers' Office at Pittsburgh rejected all bids on the basis that the prices quoted were too high.

Q. What happened?

A. They readvertised and set a later date for the re-opening of the bids. After we were notified of this we again conferred in our own company and we decided that we would attempt to meet the Government at least half way, so that we decided that on the next letting that we would quote a price of $1.77 bulk delivered at Grafton. We filed this price after we had made our decision and quoted this price on the next letting.

Q. Now, as to all of this, Mr. Coogan, did you have negotiations or any communications with your competitors with respect to what you would or would not bid?

24260 A. No, sir; I did not.

Q. Did you also file your second price with the Code Authority?

A. Yes, sir; we did.

Q. What happened as to the second letting?

A. The Government again rejected the bids. At about that time there was some bids asked for in the Muskingum Valley, Ohio, and, as I remember, those bids, they were one or two cents lower basis than the second bid we had made to Tygart Valley, and the Government rejected the bids again on the basis that the price was too high.

Q. Did that close the matter or did they re-advertise for further bids?

A. No, sir; they re-advertised a third time for bids. In the meantime, I personally had interviewed the engineer in charge in the Pittsburgh district, as well as some other officials of the War Department, and I gathered from my conversations with them, while no mention was made directly about the price, but I got the clear impression that the Government would not be satisfied unless they got a price of $1.30 plus the freight rates from our mill.

I went back to Easton. I talked over the matter with the executives of our company, and, after much discussion, we decided that we would try to meet the Government's desires, and that on the next bidding that we
24254 would quote a price based on $1.30 at our Manheim, W. Va., mill.

Q. Did you file that price?

A. Yes, sir; that was during the Code period, and that price was also filed.

Q. What happened on the third letting?

A. On the third letting there was a—we received an award of 600,000 barrels, and there were two other awards of 300,000 barrels each that were made to two other companies, the selection being made by lot.

Q. And this $1.84 which is shown on the Commission's exhibit, is the $1.84 you described in making your first bid; is that correct?

A. Yes, sir; that is the first bid—as a matter of fact, the Government had only put in, according to my recollection, two bids on that particular job.

24262 Mr. Coogan, I show you Respondents' Exhibits 810 and 811, for identification, and ask you if you can identify them (showing documents to witness)?

A. Respondents' Exhibit 810 is a letter from me, dated January 11, 1935, addressed to the Code Authority, filing prices, terms, and conditions on Tygart Valley Reservoir.

Trial Examiner Norwood: What is Respondents' Exhibit 811?

The Witness: Respondents' Exhibit 811-A and B is a notice from the Code Authority addressed to the members as to this filing.

24263 (RESP. EXS. 810, 811-A, and 811-B, were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Coogan, can you identify Respondents' Exhibit 812-A to G, inclusive?

A. Respondents' Exhibit 812-A to G, inclusive, is an office copy of the bid submitted by us to the United States Engineers' Office, Pittsburgh, for opening February 1, 1935.

24264 (RESP. EX. 812-A to 812-G, inclusive, were offered and received in evidence.)

24265 Q. Mr. Coogan, can you identify Respondents' Exhibit 813-A and B?

24266 A. Respondents' Exhibit 813-A is a letter written by me, dated January 25, 1935, and addressed to the Code Authority.

Q. Does that have reference to the second letting?

A. And filing a price for the second letting on cement to the Tygart River Reservoir.

Respondents' Exhibit 813-B is a copy of the telegram to the Code Authority which the letter confirms.

24267 (RESP. EX. 813-A and 813-B was offered and received in evidence.)

Q. Mr. Coogan, will you identify, if you can, Exhibits 814 to 816, inclusive.

A. Respondents' Exhibit 814 is a copy of a telegram sent by me, dated February 9, 1935, addressed to the Code Authority and filing our price for the third letting of the Tygart River Reservoir.

Respondents' Exhibit 815 is a notice from the Code Authority to all interested members as to the filing made.

Respondents' Exhibit 816-A to E, inclusive, is an office copy of the bid made by the Alpha Company, opened February 16, 1935.

24268 (RESP. EXS. 814, 815, 816-A to 816-E, inclusive, were offered and received in evidence.)

Q. Mr. Coogan, I call your attention to Commission's Exhibit 547-3W, which appears to be the minutes of a meeting at Knoxville, Tenn., on July 17, 1935, and under the heading of Alpha Company your name is written as having been present at that meeting. Did you attend such a meeting, Mr. Coogan?

A. Yes, I attended that meeting in company with Mr. Postelle.

Q. Yes, Mr. Postelle's name is listed just below yours in the minutes.

Now, I wish to call your attention to Commission's Exhibit 547-4C, and in the second paragraph of that exhibit it states: "These plans and interpretations were unanimously concurred in by all members of the southeastern district and approved at the meeting."

Let me ask you, Mr. Coogan, whether you approved any such plans at that meeting.

A. I am familiar with the exhibit referred to, and while I was at that meeting no such plans or interpretations were discussed.

Q. Were you there during the entire meeting?

A. No. I left the Knoxville meeting between
24269 12 and 1 o'clock on that day with Mr. Postelle and drove over to South Carolina to visit my daughter, and I did not remain for the meeting.

Q. As I understand you, no such plans were approved by you while you were there?

A. No sir; nor did I hear them discussed.

24270. *Cross-Examination by Mr. Wooden.*

Q. Well, Mr. Coogan, just on that last point, do I understand that you have never shipped for the account of another company nor had another company ship for your account because of an advantage in increasing the mill net either of yours or the competitor?

A. We never have done that, never in the history of the company has that been done by us.

Q. Now, this southeastern meeting represented by Commission's Exhibit 547-4C that Mr. Leisure asked you about, did you receive a copy of the minutes of the meeting?

A. I did not.

Q. Did Mr. Postelle?

A. I can't answer for Mr. Postelle whether he did or not. I had not seen a copy of those interpretations until I saw them in the exhibits introduced in this case.

Q. Was any such subject as covered by Exhibit 547-4C discussed while you were at the meeting?

A. Not while I was there; no, sir.

Q. Do you know how much longer the meeting lasted after you had left?

A No, I do not, Mr. Wooden.

Q. Were you there from the beginning of the meeting?

24271 A. Yes, I arrived there in the morning and stayed until some time between 12 and 1 o'clock.

Q. You have testified on a number of occasions on your direct examination that you have never had any understandings or agreements with competitors regarding prices or terms of sale or relations with dealers, or, in fact, I believe, regarding anything covered by the allegations of the complaint; is that correct?

A. Yes, sir; that is correct.

Q. In such testimony were you making an all-inclusive

answer as to—and without qualification as to time, or were you limiting it to certain times within your experience?

A. In my replies in one or two cases I limited it to the specific question that has been asked me.

Q. Well, I am asking whether the element of time figured in your answers,—in any answers that you made, whether your answers were intended to be applicable to all time within your experience?

Mr. Leisure: Well, now, if Your Honor please, I think that that is a rather unfair question to ask. The witness has been on the stand three weeks and now he asks him what he intended as to time as to all of his testimony. If Mr. Wooden has any specific instances to bring out, I think he should direct the witness' attention to it and ask him. I think that is—

24272 Trial Examiner Norwood: I think he may ask him this general question on cross-examination. Objection overruled.

A. Yes, I will make my answer applicable to all time within my experience.

By Mr. Wooden:

Q. When you say that you have never had any agreement or understanding with your competitors on any such subject as those mentioned, I would just like to know what your conception of an agreement or understanding is. For instance, do you consider this expression in Exhibit 547-C, the minutes of the meeting of the southeastern division stating what the unanimous opinion was, do you consider that an agreement or understanding?

Mr. Leisure: Well, now, if Your Honor pleases, I think we are getting pretty far afield. We are asking the witness here to interpret another man's writing. Mr. Coogan didn't write this letter.

Trial Examiner Norwood: No.

Mr. Wooden: That doesn't make any difference.

Trial Examiner Norwood: He is asking for his definition of an understanding.

Mr. Leisure: Well, I—

24273 Trial Examiner Norwood: Objection overruled.

Mr. Leisure: I think the question goes beyond that.

A. Well, my definition of understanding or agreement

is anything that I might do on my part that would restrict the future action of either myself or my company.

Trial Examiner Norwood: He asked you if the terms which you read there come within your definition of an understanding.

The Witness: Of course you realize that my testimony is to the effect that I was not present when that was discussed.

By Mr. Wooden:

Q. Yes.

A. So I don't know how far it went.

Q. I am just basing it on the record as made in Exhibit 547-4C, where the southeastern division head sends out a statement that these statements represent the unanimous opinion of the meeting there.

Do you consider that an agreement or understanding among those present?

A. Well, Mr. Wooden, I don't consider it anything—I don't care to express an opinion on an understanding or an agreement of something in which I did not take part.

Q. Yes, but your concept of an understanding or agreement becomes important here because you have tes-
24274 tified, over and over again, that there was no such thing.

A. I have stated my concept of an agreement.

Trial Examiner Norwood: Would the case that Mr. Wooden puts there to you be an understanding or agreement, as you understand the word?

The Witness: If—as I remember the exhibit—if everything stated in the exhibit were true I would say that it was an agreement.

By Mr. Wooden:

Q. Well, now, what about the Code, the N.R.A. Code, wasn't that Code prepared as a result of meetings of competitors in the cement industry, and put forward as their collective opinion of what the proper practices in the industry should be?

A. Yes, sir; and I exclude the Code period, and the time that the Code was being prepared.

Q. All right, then, I just want to get it clear.

Do you then concede that the N. R. A. Code represented an agreement among the competitors?

A. Well, my answer goes in that the N. R. A. Code ought to speak for itself; it is in evidence.

Q. I know, but—

A. (Resumed) And I don't think I ought to express an opinion as to what the Code provides.

Q. We cannot tell what your entire testimony means about agreements or understandings unless we un-
24275 derstand your concept of it. I am trying to get at it by asking you whether or not the N. R. A. Code, in your opinion, was an agreement among competitors.

A. My own conception of that is that that was a statement of the best policies existing in the industry at the time the Code was proposed and presented.

Q. Well, granting all that, I still ask you whether, in your opinion, and under your concept of an agreement or understanding among competitors, whether the N. R. A. Code was such an agreement or understanding.

A. If I am forced to make an answer,— I should say it was a legal agreement.

Q. I am not raising the question as to its legality,— whether it was an agreement,—you then say it was an agreement?

A. I say it was a legal agreement.

Q. All right, but an agreement nevertheless?

(Witness makes no response.)

Q. Well, now, what do you say as to the Trade Practice Committee that succeeded the Code Authority, and the action taken to carry out and continue the Code provisions; was that an agreement or understanding, in your opinion?

A. That was a voluntary understanding that the contract—or that the Trade Practice Committee would continue as they had under the Code, temporarily.

24276 Q. Do you consider that the provisions of the Code which the Trade Practice Committee undertook to continue and carry out, that that continued as an agreement, just like the Code provisions had been during the Code period?

A. No. After the Code had been abrogated, I considered everything was voluntary, and could or could not be followed. Of course, under the Code we were forced to follow it.

Q. Well, do you make a distinction between voluntary and an involuntary agreement in your answers as to whether—

A. No.

Q. —In other words, a voluntary agreement is still an agreement?

A. Yes, it is still an agreement, and I think that in this particular case referred to that during the interim period—when it ended I don't know—but I think in the interim period, I think it was justified.

Q. Well, when did the interim period end, as you conceive it?

A. It ended in any place from about four to six months I think that our own company discontinued quoting or filing prices about November.

Q. Do you mark the end of the interim period by the cessation of the filing of prices with the Code Authority?

A. That is, so far as our own company was concerned, that was the only thing that we did after the interim period.

24277 Q. Didn't you continue to carry on many of the same practices in your business that the N. R. A. Code had provided for?

A. Yes, and we still carry them on today.

Q. You agree, I believe, that the Trade Practice Committee carried them on during an interim period as the result of an agreement.

What distinction do you draw between carrying them on afterwards and carrying them on during the Trade Practice Committee agreement,—just when and how—

A. Because of—

Q. —when and how did the agreement that you admit existed there, when did it cease and end?

A. Well, after that interim period was ended,—so far as our own company is concerned, they have been carried on entirely as an individual company without any reference to any other company.

Q. Do you consider it, in your answers, as to there being no agreement or understanding among competitors regarding prices and these other matters,—do you consider that a recommendation by a committee that was appointed to serve the industry—do you consider that that represents an agreement?

A. No, I think that that represents the opinion of the committee, and it would depend entirely upon what question was handled by the committee.

Q. Well, do you think when a committee is com-
24278 posed of competitors' representatives, that when they reach an agreement as to what they shall recommend, that that is an agreement among those competitors?

A. Among those particular competitors, yes.

Q. Do you think the question of whose committee that is, or how it is appointed, or whom they represent, has anything to do with whose agreement it is?

A. Well, I think that I ought to be told what particular subject the committee was handling, and not make a catch-all answer.

Q. Well, suppose there was a committee such as a trade relations committee, like the old trade relations committee of the Portland Cement Association that you served on, I believe.

A. Yes.

Q. Along with representatives of your competitors.

A. (Witness makes no response.)

Q. I believe you said a minute ago that that would represent an agreement among the members of that committee. You were on that committee.

A. Correct.

Q. Then, do you consider that you had reached an agreement with the other members of that committee?

A. I think that we reached an agreement as to what constituted the best practices then existing in the industry, but I don't think that we reached any agree-
24279 ment as to putting those practices into effect.

Q. You recommended them, I believe; is that right?

A. We recommended them to the consideration of the membership.

Q. And weren't they quite largely adopted and put into effect by the various members through whom the recommendations were made?

A. No, some were and some were not. There was a very variant use made of the report of the Trade Practice Committee.

Q. And, in so far as they were put into effect by the various members to whom the recommendations were made, would you say, then, that they were acting in agreement, or understanding, with the members of the committee that made the recommendations?

A. I would not.

Q. Would you consider it an agreement, or understanding, among competitors, such as those embodied in these license agreements that existed some years back?

A. I think the license agreement speaks for itself, and my interpretation of the license agreement is that it was something that was enforceable by law.

Q. Well, you think they were agreements at any rate,—you agree to that, don't you, that they were agreements among competitors?

A. What do you mean "agreements among competitors"?

24280 Q. The license agreements.

A. The license agreement was a—

Q. Back in 1907 to 1911, or along thereabouts.

A. The license agreement was not an agreement among competitors; it was a set of rules and regulations laid out by the company owning the license.

Q. But the licensees were competitors, were they not?

A. The licensees were.

Q. And the licensor, was it a competitor of the licensees, or what was it?

A. Yes, sir; he was a—no, a licensor was not a competitor, because he was not in the active selling of cement.

Q. Referring to the Code of Ethics that The Cement Institute adopted back in 1930, or thereabouts, prior to the N. R. A. Code,—do you consider that Code to represent an agreement among competitors?

A. No, sir; I do not.

Q. Even though it was signed?

A. It was never signed by our company.

Q. Yes, but you know it was signed by others?

A. I knew it was signed by some companies, yes.

Q. Do you think it is dependent on whether it was signed or not, as to whether it was an agreement?

A. No, I think the purpose for which that Code of Ethics was prepared was entirely legitimate, and 24281 did not necessarily constitute an agreement. I think, again, that it stated what were considered the best practices in the hopes that they could be submitted and acted upon in a trade practice conference.

Q. Do you consider it an agreement or understanding for various competitors or representatives among cement manufacturers to meet and discuss their questions with retailers as to what classes of trade should be sold directly.

and what classes should be sold through dealers, and then put out the statements in conformity with such discussions?

A. As far as our own company is concerned, I don't think that we have ever done that.

Q. Well, assume that it has been done at all. I want to get your idea as to whether in your mind that is an agreement or understanding.

A. I should say if it is arrived at in a meeting of groups, that it comes close to an agreement.

Q. Do you consider it to be an agreement or understanding among competitors that they get together and discuss a given trade practice, and then without anything more appearing you find that they each go ahead and change their practice or adopt a similar practice such as had been discussed?

A. I can't understand your question; it is too all-inclusive.

Trial Examiner Norwood: Read the question, please.

(Last question read by Reporter.)

24282 Mr. Leisure: Your Honor pleases, I think we have had enough of this hypothetical examination of this witness. This is not a star proceeding of any kind.

Trial Examiner Norwood: I think that—

Mr. Leisure: If he wants to cross-examine the witness on any of the evidence in this case, or anything that has to do with this witness' testimony, or his own company, or his participation in anything in this case, I have no objection to it; but just to enter into this philosophical debate with the witness about agreements, when we know that the witness is no a lawyer, and that what he may say about agreements is not controlling anyway—

Mr. Wooden: Well, I object to—

Trial Examiner Norwood: He certainly has a right to test his understanding to the fullest extent,—the witness' understanding of the word "agreement."

Mr. Wooden: It is the only way you can understand his testimony.

Trial Examiner Norwood: Go ahead.

Mr. Wooden: It is the only way we can interpret his testimony.

Trial Examiner Norwood: Yes, I think so. Go ahead.

A. I would have to have a specification of what
24283 had been discussed and what had been done about it. I don't see how I could answer the question generally.

By Mr. Wooden:

Q. Well, we may come to that later.

It is my understanding that you have never served, Mr. Coogan, as an officer or trustee of The Cement Institute; is that correct?

A. Correct, yes.

Q. What committees have you served on?

A. I served on the committee on new plants, and the bag tax committee, the tariff committee, the local materials committee, and there might have been one or two others. I testified to every committee that I served on.

Q. Which ones have you been chairman of, if any?

A. I was a chairman of the tariff committee, chairman of the bag tax committee. I think those are the only two that I was chairman of.

Q. Did this bag tax committee have anything to do with bags other than the manner of tax refunds on them?

A. No, sir; nothing whatever.

Q. Did you ever serve on a bag committee in the industry having to do with allowances for returned bags?

A. No, sir; I never heard of such a committee.

Q. Has any other officer of the Alpha Company served as an officer or trustee of The Cement Institute?

24284 A. Yes. I think that the former president of our company was a trustee, and I think that our present president is a trustee of The Cement Institute.

Q. Who are those two gentlemen?

A. G. S. Brown was formerly president, and F. G. MacAlvey is the present president of our company.

Q. What position in the Institute did they hold?

A. As I have said, they were members of the boards of trustees, and I think Mr. MacAlvey was a vice-president and probably on the executive committee.

Q. Have you attended meetings with competitors from time to time?

A. Well, of course—what do you mean? Meetings of the Institute?

Q. No, meetings with competitors.

A. Well, you mean stated meetings?

Q. I didn't specify any kind of meetings. You can state what you like about it.

Mr. Leisure: Well, if Your Honor please, I think the question should be clarified because Mr. Wooden knows full well that they have had meetings during the Code period, and things of that kind.

Trial Examiner Norwood: The witness can say. He can ask him if he had meetings. Go ahead.

A. Well, of course, I attended meetings with my
24285 competitors during the Code period, and I see them at the Portland Cement Association meetings, and sometimes when I attend Cement Institute meetings.

Q. Do you see them any other times?

A. Why, I see them many other times individually and sometimes two and three at a time.

Q. Do you see them other times collectively?

A. Only in so far as I have said, that sometimes on the train I will meet two or three of my competitors. Now, that is not a meeting, nor it is not meeting them collectively. It is simply a chance meeting that we run into.

Q. Do you have any regular meetings of your districts 1 and 2 of The Cement Institute?

A. There used to be once in a while a meeting of The Cement Institute in districts 1 and 2, but I don't remember anything particular about them.

Q. Well, have you attended such meetings of districts 1 and 2 of the Institute?

A. Well, the minutes will show any meetings that I attended in so far as The Cement Institute is concerned.

Q. I am asking you for your recollection about it.

A. Well, I think the minutes would be the best thing because I could not definitely say that I attended any particular meeting.

Q. I am not asking you whether you did attend
24286 any particular meeting but whether you have attended meetings of districts 1 and 2 of the Institute?

A. Well, when you put the meetings—I won't say. I will tell you that I have attended a meeting of The Cement Institute and I think that any meetings that I did attend can be proven by the minutes.

Q. Have you attended any meetings of the districts 1 and 2 of the Institute since 1935?

A. No, sir.

Q. Have there not been regular meetings of those dis-

A. I don't know.

Q. Have you attended regular meetings of any group of competitors since 1935?

A. I have stated that I attended meetings of the Portland Cement Association and I don't know positively whether The Cement Institute has had any general meetings since '35 or not. If they have, I probably attended them.

Q. Have you attended any meetings of districts 1 and 2 since 1935?

A. To the best of my recollection, I have not.

Q. When you have these Portland Cement Association meetings, do you have any discussions with groups of competitors with whom you are in active competition?

A. Why, of course, I have discussions with them every time I see them, whether it is at a meeting of the
24287 Portland Cement Association or on the train or at a club or any other place.

Q. Do some of the groups get off together and have a little discussion among themselves?

A. Not so far as I know.

Q. You have never attended any such—

A. No, sir.

Q. —gatherings?

You told us on direct something about your talking with groups of your competitors about the subject of dealers handling foreign cement. Where did such group discussions take place?

A. They took—I didn't say—confine it to groups. I said singly and perhaps in groups.

Q. Yes.

A. It would occur on the train very often. I would meet two or three of my competitors and we had no discussions whatever until after our own company had adopted the policy of not selling to dealers who were handling foreign cement.

Q. Then what did you discuss with them on that particular subject?

A. I simply asked them what experience they were having with it. In some cases I got replies and in some cases I did not.

Q. They were all following a similar policy to yours at that time?

A. No, they were not. I have already stated
24288 that there were at least two companies that I know of that were not following that policy.

Q. That you discussed the matter with?

A. I sometimes came in contact with one of the companies that had never adopted it.

Q. Didn't you discuss with them on such occasions the subject of how well your policy was progressing?

A. No, I don't think that I discussed that with them. The information that we got as to how far—how well our policy was progressing came from our own organization. We got reports, and I have stated that we only had two occasions that we even declined to sell.

Q. Well, I am not clear what you did talk about with your competitors in groups that you have mentioned on that subject of dealers handling foreign cement.

A. The principal conversation that I had was this fact, that it had been my experience that there had been a great deal of interchange of cement between foreign cement dealers and domestic cement dealers, and I was anxious to see whether my competitors were having the same experience that we were in carrying out the policy which we had adopted.

Q. That materially affected your consideration of whether it was worth while considering the policy, didn't it, whether dealers were exchanging in this way?

A. Well, it demonstrated to me how difficult it
24289 was to enforce that policy.

Q. Then you were seeking information from competitors which was a factor in deciding whether the policy should be continued, weren't you?

A. I was seeking information from my competitors to enable me to intelligently handle my own business.

Q. As a matter of fact, any concern or any competitor that would adopt the policy of selling freely to dealers handling foreign cement, wouldn't that just about force you to go along?

A. No, not at all. As a matter of fact, I think there is one company today that still maintains that policy in effect.

Q. I said the policy not of refusing to sell dealers but a company of large—a powerful company that imposed no restrictions upon dealers handling foreign cement, that would have forced you to go along with them, wouldn't it?

A. Why, no. I know the experience of one company who carried it for years as an individual policy in their markets.

Q. You are now referring to the National, are you?

A. Lone Star.

Q. Lone Star?

A. Yes.

Q. Well, you are misconstruing my question.

A. Maybe I am.

24290

Washington, D. C.,
September 29, 1939.

24291 F. M. COOGAN thereupon resumed the stand and testified as follows:

Cross-Examination (Continued) by Mr. Wooden.

24293 Q. As a matter of fact, you were the first to resume selling dealers handling foreign cement in Boston, were you not?

A. I think so, yes.

Q. Did not your competitors criticize you for resuming sales there to dealers handling foreign cement?

A. I— They never criticized me.

Q. Did it ever come to you?

A. I have heard that they wondered why we changed our policy.

Q. How did that come to you?

A. It came to me in the course of conversations; I have no distinct recollection of when, where, or how.

Q. And with whom?

A. No.

Q. Were they conversations with your competitors?

A. Well, no. I think it probably came from our customers—in fact, I am quite sure it did.

Q. What was the ground of the criticism?

A. Well, you would—

Q. —as it came to you?

A. I think that you would have to ask the man
24294 that made the criticism; I wouldn't know what his grounds were.

Q. Didn't you have a conversation with Mr. Ray of

Waldo Brothers in which you told him that your competitors had criticized you for resuming sales to his firm?

A. I don't remember saying that to Mr. Ray; it is possible that I did say it, but I don't remember it.

Q. Now, I believe you testified that in your conception of what is an agreement or understanding, that the action of the Trade Practice Committee in continuing the N. R. A. Code provisions constituted a voluntary agreement.

(Witness makes no response.)

Q. Now, you also testified on page 24280 that The Cement Institute Code, which was adopted in 1929 or 1930, and which was signed by the members—some members—was not an agreement. How do you conclude that the N. R. A. Code was an agreement and the Institute Code of 1930 was not an agreement?

A. Well, I don't think either one of them were an agreement.

Q. Well—

A. If I said that the Institute Code was an agreement, I made a misstatement.

Q. Well, you did say it.

A. Well, then, I made a misstatement.

Q. So it is now your testimony, is it, that there have been no exceptions to your testimony to the effect that there has never in all your experience been agree-
24295 ments between your company and competitors on these subjects covered by the complaint in this case?

A. Well, of course, I don't think that my testimony covered all of the things mentioned in the complaint; there are so many things mentioned in there that I wouldn't want to make an all-inclusive answer.

Q. Well, on the subject—

A. It does apply to everything to which I testified.

Q. Yes, all right.

Why do you conclude today that the N. R. A. Code was not an agreement, and yesterday you thought it was?

A. Because yesterday, when you asked about the N. R. A. Code, I overlooked the fact that the N. R. A. Code had been prepared under Government supervision with an N. R. A. representative present, and, in fact, some of the provisions in the N. R. A. Code were written by N. R. A. administrators and put in there, and that the industry—or no member of the industry—had anything to do with it.

Q. Does that make it any less an agreement just because it had some Government approval?

A. Well, of course, I can never agree that anything under the N. R. A. Code constitutes an agreement.

Q. That is your conclusion or opinion, notwithstanding the fact that the various provisions to be included in the Code were discussed and decided and votes taken upon each one?

24296 A. Always with a Government official present and under the guidance of a governmental department.

Q. Always?

A. As I remember.

Q. Even before the Code was first thrown into tentative form?

A. Oh, yes; oh, yes, indeed.

Q. You had no meetings at which those subjects were taken up and passed upon unless some Government official was present; is that correct?

A. That's according to my best recollection.

Q. Would the minutes of such meeting show the presence of such governmental officials?

A. Well, I presume they would; I don't know.

Q. If they were there.

A. Of course, I looked upon the Code as a matter of compulsory acceptance.

Q. Do you draw any distinction, in your mind, between an agreement and a non-agreement, depending upon whether it was compulsory or not?

A. Well, I think one that's compelled by the Government does not constitute an agreement, to my mind.

Q. Well, aside from that, do you think the element of compulsion from any source, or of any character, is a necessary ingredient of an agreement?

A. Well, Mr. Wooden, I think that that question 24297 is a pretty broad question. I think that depends upon where the compulsion comes from.

Q. Is it your idea, then, that if compulsion comes from the Government it is not an agreement, but if it comes from anyone other than the Government it is an agreement,—or what?

A. I would certainly take the stand that coming from the Government that it does not constitute an agreement.

Q. Taking the period after the N. R. A. Code was held

unconstitutional,—or codes,—do you consider that the actions of a Trade Practice Committee, of which you were a member, in seeking to carry out the provisions of the Code, constituted an agreement?

A. No, because I think everybody was free to do as they wanted to do.

Q. Now, you have changed your mind over night on that, too. Yesterday you were willing to concede that that was an agreement. Why have you changed your mind about it?

Mr. Leisure: Now, that doesn't correctly state the record, I don't believe, Your Honor.

Mr. Wooden: I am pretty sure it does.

Mr. Leisure: I don't think so.

Trial Examiner Norwood: Well, the record will show.

A. I have given you my opinion.

By Mr. Wooden:

Q. My last question is, why have you changed your 24298 mind over night on that subject?

Mr. Leisure: I object to the question unless the record is read, then, because to my recollection that does not correctly state the record.

Mr. Wooden: Let him state whether he has changed his mind over night, and then let the record show.

Mr. Leisure: Don't ask him that question. I am going to object.

By Mr. Wooden:

Q. Why have you changed your mind over night, Mr. Coogan, on that question of whether the actions of the Trade Practice Committee corresponded to your conception of an agreement?

A. No, I haven't changed my mind over night. If I made such a statement—I think I said yesterday that I felt that the Trade Practice Committee had every reason in view of all conditions to temporarily carry on as they had under the Code for an interim period.

Q. Didn't you say, on page 24275, that if you were forced to make an answer you would say that the N. R. A. Code was a legal agreement?

Mr. Leisure: Now, you asked him about the period after the agreement—after the Code.

Mr. Wooden: I know. I am coming to that.

Mr. Leisure: Are you asking him something else now?

Mr. Wooden: I had asked him that before.

24299 Mr. Leisure: I object to your starting "Didn't you say" because we are talking about a different subject.

Mr. Wooden: Well, I am taking up a different subject. I know I am, but it is a related subject.

The Witness: All right, and I referred to it this morning as a compulsory reason.

By Mr. Wooden:

Q. You think it was an agreement because it was compulsory?

A. I told you ~~that I didn't~~ think anything done under the N. R. A., and under Government supervision, constituted an agreement.

Q. You said here it was a legal agreement in your opinion.

A. I think it is a compulsory acceptance, myself.

Q. My last question hasn't been answered yet. Do you consider the N. R. A. Code was not an agreement because it was compulsory?

A. I will never—taking everything into consideration as to the way the N. R. A. Code was prepared and the way it was enforced, I don't see how I could ever consider it an agreement among manufacturers.

Q. Didn't you, on page 24276, yesterday afternoon testify that the activities of the Trade Practice ~~Conference~~ Committee constituted a voluntary agreement (handing the witness a transcript)?

A. Yes, it has been referred to as an agreement
24300 in that interim period.

Q. Well, I was asking what your conception of it was and how it was referred to.

Mr. McFadden: May I see the record, Mr. Wooden? Doesn't that refer, as you said, to the Trade Practice Conference Committee, one prior to N. R. A.?

Mr. Wooden: No, Trade Practice Committee after the Code.

Mr. McFadden: I got the word "conference" from your statement.

Mr. Wooden: Well, I didn't intend to.

Q. Well, have you changed your mind over night upon the question of whether the Trade Practice Committee's activities constituted an agreement?

Mr. Porter: I wish you would specify the time, Mr. Wooden, because there have been several Trade Practice Committees you referred to in this case. You mean after the Code?

Mr. Wooden: I don't know it by any other name. There is only one Trade Practice Committee.

Mr. Porter: I think that was the title of the old—

Mr. Wooden: Following the N. R. A.

Mr. Porter: I think that was the name in the P. C. A.

Mr. Wooden: Trade Relations Committee.

24301 A. My conception of that is that the Trade Practice Committee temporarily continued the work that had been carried on by the Code Authority. Now, I have explained to you that I did not consider the operations under the Code as an agreement. Therefore, in that interim period I don't call that an agreement.

By Mr. Wooden:

Q. You have changed your mind over night on that?

A. I don't know what I said yesterday. That is what I am saying this morning.

Q. I believe you agreed yesterday that if a committee of competitors made recommendations about certain trade practices as being good—the best business practices followed or to be followed in the industry, that that was an agreement among the members of the committee, at least. Would you say that?

Mr. Porter: Your Honor, I don't think he said that at all. What he said was that the committee agreed—

Trial Examiner Norwood: Wait a minute.

Mr. Porter: —as to whether—

Trial Examiner Norwood: Don't tell him what he said.

Mr. Porter: I beg your pardon?

Trial Examiner Norwood: Don't tell him what
24302 he said.

Mr. Porter: No, but I object to Mr. Wooden's—

Trial Examiner Norwood: That isn't fair to the cross-examiner.

Mr. Porter: I object to Mr. Wooden misquoting the testimony.

Trial Examiner Norwood: Read the question.

Mr. Wooden: Well, now, I am not misquoting it.

(Question read.)

A. I would ask what my answer was yesterday; Mr. Wooden said he would read it.

By Mr. Wooden:

Q. I want your present recollection.

Mr. Leisure: No, no.

By Mr. Wooden:

Q. Or opinion of what you said.

Mr. Leisure: You asked what he said yesterday and asked him if he didn't say it. Now, I think he is entitled to have the record read.

Mr. Wooden: All right.

Trial Examiner Norwood: It was my impression that he asked him if he did agree to that. I will sustain an objection to that and let you ask it in another form.

By Mr. Wooden:

Q. Referring to the bottom of page 24277, and 24303 the top of page 24278, didn't you then and there agree that there was an agreement among the members of a committee acting under the circumstances that I have just outlined (handing a transcript to the witness)?

A. I would not care to change the answer that I made yesterday to that.

Q. All right.

A. Which states clearly my opinion in connection with that.

Q. And wasn't it to the effect that you conceived of such a thing as an agreement among the members of the committee?

Mr. Leisure: Well, that is immaterial. The record speaks for itself on that.

Trial Examiner Norwood: No, no. He can question him further as to the understanding.

A. As I stated there, it constituted in that particular case an agreement as to what the members of the committee thought the best practice was, but there was no obligation on the part of either the members of the committee or of any other member of the industry to follow those recommendations.

By Mr. Wooden:

Q. You mean no compulsion to follow them, or what?

A. No compulsion or obligation. They could do as they pleased.

Q. As a matter of fact, can't a concern that is a party to an agreement violate the agreement if it wants to?

24304 Mr. Leisure: I object to that, now, Your Honor. I want to make it clear. We have had so much discussion here without addressing the witness' attention to any specific facts in this case, and it isn't helpful to the record or to Your Honor or to the Commission, just general discussions of this kind. I object to the last question on that ground.

Trial Examiner Norwood: Read that.

(Question read.)

Mr. Leisure: Now, that is purely—

Trial Examiner Norwood: I don't see that that is—how is that—are you bringing out his understanding of the word "agreement"?

Mr. Wooden: There is no agreement because it is voluntary and free to either observe the practice or depart from it.

Trial Examiner Norwood: You want to ask him.

Mr. Wooden: I am asking if that is—

Trial Examiner Norwood: If he considers it any less an agreement because there is an obligation to carry it out?

Mr. Wooden: Because he says there is no obligation. I am going behind his conception of what an obligation is and how far an obligation goes.

Mr. Leisure: He didn't ask him—

24305 Mr. Wooden: Or compels one to observe it.

Trial Examiner Norwood: I think the Counsel can reframe that question so as to make all of us a little happier.

Mr. Wooden: I will pass it by.

By Mr. Wooden:

Q. Well, now, you have reaffirmed your testimony of yesterday regarding the status, in your opinion, of the action of the committee. What would you say as to the action of the board of trustees of the Institute in December, 1935, recommending the adoption of the Compendium of Trade Practices?

Mr. Leisure: I submit that that is not a question. "What would you say of it?" What does Counsel want to know? He could talk for two weeks on it. What is it that he wants to know about the adoption of the Compendium? I object to it.

Trial Examiner Norwood: You mean to ask him if he considers that an agreement?

Mr. Wooden: Yes.

Trial Examiner Norwood: Yes. Objection overruled.

A. I do not consider it an agreement.

By Mr. Wooden:

Q. How do you distinguish between the action of the board of trustees in approving a statement of trade practices and the action of the Trade Practice Committee in carrying on the Code which you have restated in 24306 your opinion did constitute a voluntary agreement?

Mr. McFadden: I understood to the contrary.

Trial Examiner Norwood: Wait a moment.

Mr. Wooden: The record will show.

Mr. McFadden: The reason that I am objecting, Your Honor, is that the Counsel is misstating the answer given by the witness.

Trial Examiner Norwood: Yes.

Mr. Wooden: Well, I am not.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Porter: Your Honor, may I make the further objection: I don't think the witness testified at all about the action of the board of trustees or the Compendium. I think it is outside of the scope of his direct examination.

Trial Examiner Norwood: Yes. I think maybe a preliminary question there would be in order.

Mr. Wooden: Well, his whole concept of agreement and understanding becomes important here, Your Honor. At the time that he was first asked such questions on direct, I objected because they called for conclusions, and legal conclusions, and nevertheless he was permitted to answer.

Now, I say that it is our province to discover the 24307 boundaries of his concept of agreement and understanding from every point of the compass.

Mr. Porter: This witness has never been offered as a metaphysical—

Trial Examiner Norwood: You can ask him if he does distinguish between those two. I take the question to mean that. Yes. Objection overruled.

A. I think I ought to be shown the minutes of the board of trustees' meeting.

By Mr. Wooden:

Q. Referring to Commission's Exhibit 624-F, a portion of the minutes of the board of trustees of the Institute, dated December 9, 1935, doesn't it appear there that the board of trustees approved the Compendium of the Trade Practice Committee (indicating)?

A. It states here that the board of trustees approved it as representing the best practices now prevailing in the industry, and as such to be submitted to each member company.

Q. And that was voted on and the motion was carried, wasn't it?

A. I don't think I was present at that meeting, but I am not sure of that.

Q. You were a member?

A. I had no vote, and I am not—I was never a member of the trustees.

24308 Q. Weren't you a member of the Trade Practice Committee?

A. Yes, sir.

Q. Did the Trade Practice Committee have a part in the preparation of the Compendium?

A. I was a member of the Trade Practice Committee, but I had no part in the preparation of the Compendium.

Q. Did the committee—Trade Practice Committee—of which you were a member, have a part in it?

A. Yes, some members of the committee did.

Q. I notice it is referred to here as the Compendium of the Trade Practice Committee; do you think that is correct?

A. Well, I said that it was prepared by some members of the Trade Practice Committee.

Q. But was it the Trade Practice Committee's Compendium? That is what the minutes say.

A. The report itself states that it was. I don't remember the wording; but the report itself states it.

Q. Well, now, in view of the minutes of the trustees that are just referred to, how do you distinguish between their action on the Compendium and the action of the Trade Practice Committee, in continuing on a voluntary basis the provisions of the Code?

Mr. Leisure: Now, if Your Honor pleases, I want to state an objection to that question.

The objective of the question is apparently to get
24309 some admission from this witness that will bind not only his company, but other members of the industry.

The witness did not attend this meeting he is talking about, had nothing to do with it; therefore, to ask him to explain what they did, and how he compares what they did with what he did, is an improper question, and I object to it on that ground.

Mr. Wooden: That is not the question, or the purpose of the question. It is to prove this witness' conception of what an agreement or understanding is—

Trial Examiner Norwood: Yes.

Mr. Wooden: —That he has testified so freely about on direct examination.

Trial Examiner Norwood: Wouldn't that be a legitimate objective on cross-examination, anyway?

Mr. Leisure: Not to ask him what someone else did. He is asking him to explain the difference between what they did and some other committee, which he had part in. Now if it is two committees that he participated in, and he asks him to explain the difference, that is one thing; but to ask him what someone else did, how he explains why that is different,—not what he knows,—I think that is entirely improper.

Trial Examiner Norwood: Read the question

Mr. Porter: Your Honor, may I state one further
24310 objection?

Trial Examiner Norwood: Certainly.

Mr. Porter: This witness was not proffered as an expert metaphysical lexicographer.

Mr. Wooden: You make him so.

Mr. Porter: He has testified as a business man when he used the terms "understanding" and "agreement,"—he has used the words with relation to himself and his own company, in the ordinary business sense, and I submit that—

Mr. Wooden (Interposing): That is all I want.

Mr. Porter: —and I submit that this metaphysical examination that Mr. Wooden is giving him is an abuse of cross-examination and should be stopped, and I object to the cross-examination along this line any further, on that ground.

Trial Examiner Norwood: Oh, I think he should be al-

lowed considerable latitude in cross-examining this witness and probing this witness' concept.

Mr. Porter: He has given a full explanation of his concept.

Trial Examiner Norwood: —of the word "agreement" and what he meant when he testified.

Mr. Porter: He has given that fully, and this cross-examination now is an abuse of the right of cross-
24311 examination, to which I object.

Trial Examiner Norwood: Oh, I do not think so.

Mr. MacIntyre: Well, Your Honor please, this witness has testified a hundred times over that neither he nor any member of his company, or representative of his company, ever entered into any agreement, understanding, or discussion that restrained trade. His testimony was to the effect of that all the way through. He used the words "agreement," "understanding," and "concept" all the way through his testimony, and restricted it no only to his action but the action of all members and representatives of his company—a hundred times over.

Trial Examiner Norwood: Read the question, please.

(Last question read as follows:

"Q. Well, now, in view of the minutes of the trustees that are just referred to, how do you distinguish between their action on the Compendium and the action of the Trade Practice Committee, in continuing on a voluntary basis the provisions of the Code?")

Trial Examiner Norwood: Well, did he testify that he thought that the action of the Trade Practice Committee constituted an agreement?

Mr. Wooden: Yes, Your Honor.

Trial Examiner Norwood: Well, the objection is overruled.

24312 Answer the question.

The Witness: May I have it read?

Trial Examiner Norwood: Read the question again.

(Last question re-read by Reporter.)

A. I think I fully explained my interpretation of the continuance of the Trade Practice Committee during the interim period, and the Code, which was prepared in the simple preparation as stated in the Code, as representing the best practices in the industry, and, as such, was submitted to the board of trustees and distributed by them to the member companies.

By Mr. Wooden:

Q. I believe you said the Code,—you mean the Compendium?

A. Yes.

Trial Examiner Norwood: Yes.

Q. Well, what was the difference between that in your conception of an agreement, and the action of the Trade Practice Committee in carrying on the provisions of the Code?

Mr. Porter: The question is objected to on the ground it has been fully answered.

Trial Examiner Norwood: The objection is overruled.

A. I can't see how I can answer it any more fully.

By Mr. Wooden:

Q. A representative of an officer of the Alpha Company was a member of the board of trustees at the time the Compendium was approved, was he not?

24313 A. Yes, I think so.

Q. Who was that?

A. Well, I am not quite sure. I imagine that was at the latter part of 1935, I think it was F. G. McAlvey.

Q. Was he not also vice-president of the Institute at that time?

A. He has been and I think was at that time.

Q. Was he not a member of the executive committee also?

A. Yes.

Q. Do you say that the company being represented on the board of trustees at that time, that the action of the trustees in approving the Compendium did not constitute an agreement or understanding between Alpha and other competitors represented on the board of trustees?

Mr. Leisure: Your Honor pleases, I want to point out that whatever this witness might say on that would not constitute anything helpful in this case, but would be merely an expression of opinion.

He had nothing to do with it. Counsel is asking this witness whether he thinks what someone else did,—what the effect of it would be. The witness is not an expert witness; he has not been tendered for that purpose.

Trial Examiner Norwood: I think he is asking him what he understands the effect of it would be.

Mr. Porter: What difference would it make
24314 what he understands the effect of it would be.

What difference would it make what he understands?

Mr. Wooden: What difference did it make when you asked him that question on direct.

Trial Examiner Norwood: This is cross-examination, gentlemen.

The objection is overruled.

Mr. MacIntyre: Respondents' Counsel asked this witness many times whether any member of his company entered into any agreements or understanding with his competitors.

Trial Examiner Norwood: Just a moment. I have already ruled.

Go ahead. Answer the question.

The Witness: What was the question?

Trial Examiner Norwood: Read the question, please.

(Last question read by Reporter.)

A. No, I do not, because there are many things contained in the Compendium that Alpha never used; in fact, they never used any part of the Compendium.

By Mr. Wooden:

Q. What is the difference between that and your testimony at page 24278, and your statement that any recommendation of a committee composed of competitors' representatives constituted an agreement among those
24315 competitors (handing official record to witness)?

A. I stated that in regard to this Compendium that it was an agreement among those that prepared it as representing the best practices then prevailing in the industry.

Q. Now, I was asking you yesterday, Mr. Coogan, about your attendance at group meetings of competitors.

Do you recall the group meetings of competitors being recommended by the Trade Practice Committee in the summer of 1935?

A. I don't remember that recommendation in particular.

Q. Well, just refresh your mind on it, referring to Commission's Exhibit 591-C, the next to the last paragraph on the page (handing exhibit to witness).

Wasn't there a motion made, seconded and adopted that the chairman be authorized and instructed—

A. Those minutes so state.

Q. —to call group meetings of the members of the industry at suitable times and locations that seemed to be desirable for the best interests of the Institute?

A. Yes, the minutes so state.

Q. And is it your testimony that you never attended any of the group meetings that the Trade Practice Committee recommended?

A. I don't recall having attended—

You asked me yesterday whether I had attended
24316 any meetings since 1935, and I said that according to my best recollection I had not.

Q. That is still your best recollection?

A. Yes, I think it is.

Q. I asked you also yesterday about conversations with competitors.

You sometimes have conversations with competitors over the telephone, do you?

A. Yes, I have at times telephoned my competitors.

Q. What are the occasions and circumstances?

A. Well, now, Mr. Wooden, it would be absolutely impossible for me to recall the circumstances and occasions of telephone calls—

Q. Well—

A. —during my experience.

Q. Were there so many of them?

Mr. Porter: Let the witness finish his answer.

The Witness: —during my experience—during my experience in this industry I have at various times talked to the executives of probably every company in the United States and Canada.

By Mr. Wooden:

Q. By telephone, you mean?

A. So many times.

Q. By telephone?

24317 A. No, not all by telephone.

Q. By telephone?

A. No.

Q. I am talking about telephone conversations now.

A. Well, I certainly have had some telephone conversations with some of my competitors.

Q. Do your competitors call you up as well as you calling them up?

A. Yes, my competitors have called me up at times.

Q. Can't you give us some idea of the occasions, or the subjects of such telephone conversations?

A. No, I couldn't specify any particular telephone conversations at any time, or with any individual.

Q. Well, I was not asking that, it was simply the subject matter, or the general occasion for having such telephone conversations.

Did you ever call up a competitor to ask him whether a report was true that a certain price was being made at a certain place?

A. No, sir; I don't ask my competitors about their prices.

Q. Or not to confirm reports that come to you?

A. No, sir.

Q. Never have competitors ask you any such things?

A. No, I never have, because I never recall anybody asking me about prices.

24318 Q. Do you mean to say that there was an entire absence of discussion about prices whenever you have contacts with your competitors?

A. No, I stated in my direct examination that so far as I am concerned I never had any objection to talking about any action that had been taken by the Alpha Company, anything that was in the past I talked about, and talked about it freely.

Q. Well, would it be in the past whether or not you had, or your salesman had actually made a certain price at a given place—wouldn't that be a past transaction?

A. Yes, after the price had been made it would be.

Q. Have you been inquired of by competitors as to whether such a price had been made?

A. No, I don't recall any specific case where that question has come up, and my conversation was in the matter of prices generally, and did not refer to specific prices.

Q. Well, the conversations about prices generally, what are they about?

A. Well, now, Mr. Wooden, I couldn't possibly recall, or repeat fully any conversations that I have had; I have had many of them over my long experience.

Q. Well, I am not asking you to repeat any particular

one, but conversations about prices generally. You have discussed with them the question of whether prices or level of prices is satisfactory?

24319 A. Well, I have heard many of my competitors complain very often, saying that they did not think prices were high enough.

Q. Did you ever make complaints like that yourself to them?

A. No, I think not.

Q. You were always satisfied?

A. No, I was not satisfied, but I was simply content to take conditions as we found them and follow along and do the best we could.

Q. Did you ever have any discussion with competitors, under those circumstances, as to whether the market was weak or strong?

A. I don't understand what you mean by that,—the market weak or strong.

Q. Well—

A. What do you mean?

Q. In other words, whether conditions of supply and demand were satisfactory from your standpoint?

A. Well, of course, there has been no time during the past 10 years when the condition of supply and demand was satisfactory.

Q. Well, has that been an occasion for discussion between you and your competitors along that line, that it was not satisfactory?

A. There have undoubtedly been discussions and remarks made that the demand was poor, or that the

24320 shipments were small, or something of that sort.

Q. Have you not sometimes had conversations with your competitors as to whether the prices were firm, or whether they were weak?

A. Well, no, I think I never have, because I think the price situation in our industry is just the same now as it was 10 years ago.

Q. Wel, what do you mean by that?

A. Well, I mean, sometimes you hear different things which indicate a lowering of prices, and we always have heard that.

Q. Well, do you discuss that, or converse with your competitors about that?

A. No, I don't discuss it, because it is simply an accepted fact, always has been in the industry.

You will always hear a great deal of lower prices; sometimes it is buyers' talk,—sometimes it is true. Now, I never try to discriminate and find out whether it is true, or whether it is buyers' talk.

Q. It is not important to you whether it is true or not?

A. Only up to the point where it has a serious effect on our business, why, then, it does become of importance.

Q. In other words, you ignore these isolated cases of claims or reports that prices are being cut?

A. Of course, 90 percent of the reports that we
24321 get come to us in such a way that they cannot be confirmed.

Q. In your concept of the word "agreement" or "understanding," do you draw any distinction between an agreement or understanding and concerted action?

Mr. Leisure: I object to that question.

I did not once ask him about concerted action, and we are going into a field now that was not raised on direct at all. It means I have simply got to go back and cover a new field that was not raised in direct.

Trial Examiner Norwood: He may find out whether his concept of agreement extends to concerted action.

Mr. Leisure: Well, then, that means I have to go back over the field with the witness on concerted action because this is a new element. I did not go into it. I just want to point that out.

Trial Examiner Norwood: The objection is overruled. Read the question.

(Last question read by Reporter.)

A. I think I ought to have an example of what is meant by "concerted action"; I think I am entitled to it.

By Mr. Wooden:

Q. You are not willing to give us your idea of what those ordinary words mean?

Mr. Leisure: I object.

Mr. Porter: Your Honor, I object to that ques-
24322 tion on the ground that this witness is not being proffered as an—

Trial Examiner Norwood: He has stated—

Mr. Porter: But he has not used the words "concerted action," and it is not proper—

Trial Examiner Norwood: The objection is sustained. The witness has stated that he does not fully understand what is meant by that term.

By Mr. Wooden:

Q. Well, on page 24273, lines 3 to 5, you define "agreement" or "understanding" as being anything that "I might do or say that would restrict the future action of either myself or my company" (handing official record to witness).

Now, when you put the word "do" in there didn't you have in mind action as distinguished from what is said to constitute an agreement?

A. I think that question is pretty badly involved.

Q. I think your answer was pretty badly involved, too.

A. My answer—I am perfectly willing to stand on the answer.

Q. Well, all right. Let's start again.

In your answer when you said things that you might do, did you include in it the element of action by your company as distinguished from statements made by your company?

A. May I have that question read?

Trial Examiner Norwood: Read it.

24323 (Question read.)

A. Mr. Wooden, I don't see how I can possibly make my answer any clearer than I gave you yesterday, and I don't—I want to answer your questions just as frankly as I can, but when I don't understand the question I don't see how I can be expected to answer.

By Mr. Wooden:

Q. You don't have any conception at the present moment of what the words "concerted action" mean?

Mr. Leisure: I object to that. It is immaterial whether he does or not.

Trial Examiner Norwood: The objection is overruled. This is cross-examination.

A. Yes, I have.

24324 A. My idea of concerted action is action taken simultaneously by a number of people.

By Mr. Wooden:

Q. Would you infer the existence of an agreement or understanding among competitors from the fact that each

one does the same thing at the same time for the same purpose?

A. Yes. Answering your question exactly as you asked it, that is, that if ten men do exactly the same thing and at the same time and under all the same conditions, yes.

Q. All right. Why, then, wouldn't you infer an agreement or understanding from the fact that ten cement mills or fifteen cement mills each put in an identical bid at a great number of destinations at the same time?

A. Well, I certainly don't think the two question link up together at all.

Trial Examiner Norwood: I think we are getting away a little bit from your inquiries about his understanding of the word "agreement."

Mr. Leisure: Your Honor, we have been through this so much. What is happening is that he is simply arguing with the witness on something that the Supreme Court has got to pass upon eventually about agreements. It is purely argument with the witness. He is not dealing with facts at all.

24325. Trial Examiner Norwood: We are drifting in that direction, at least.

Mr. Leisure: We are not dealing with facts at all.

Trial Examiner Norwood: Go ahead.

By Mr. Wooden:

Q. Mr. Coogan, if you were buying a commodity and you found the prices among competitors selling that commodity to use such as that you would have no price advantage in buying from one of them instead of another, would you infer an agreement among them?

Mr. Porter: I object, Your Honor. It is entirely incompetent and an improper question.

Trial Examiner Norwood: Objection sustained. You are getting off the lot.

Mr. Wooden: Your Honor, I can't see it. We are still trying to get this witness' conception of what an agreement or understanding is, and I think that question is very pertinent to that issue.

Trial Examiner Norwood: You asked him if he would infer from a certain state of facts.

Mr. Wooden: Yes.

Trial Examiner Norwood: As to an agreement.

Mr. Porter: I think—

Trial Examiner Norwood: It isn't clear to me. If you can show me—

24326 Mr. Porter: May I make a suggestion, Your Honor, that if Mr. Wooden will put the question that if Mr. Coogan were a member of the Supreme Court would he decide this case for the Respondents or the Government, then perhaps that question would be much more in order than this one.

Trial Examiner Norwood: That is a little further removed.

Mr. Porter: Not a bit.

Mr. Wooden: I didn't start this whole question or issue of what constitutes an agreement or understanding. It was started on the direct examination, and it was gone into fully and thoroughly over my objection. Now, having been gone into, I say I am entitled to find out this witness' conception in every respect of what he means when he said there has been no agreement or understanding, and I am putting this very question for that very purpose.

Trial Examiner Norwood: When he said that he or his company had no agreement or understanding—now, I think there is a limit. I think we are getting a little bit away from that objective.

Mr. MacIntyre: If Your Honor please, this very question was asked. His company, though, has participated in submitting a set of bids of identical prices to a purchaser, and now Mr. Wooden is simply asking him that in

24327 such a situation as that would he infer an agreement if he was on the other side of the fence.

Trial Examiner Norwood: You are asking him if he would reason that out from your state of facts. Why don't you ask him if he understands that to be an agreement?

Mr. MacIntyre: He has stated that on the seller's side he didn't consider it to be an agreement. Mr. Wooden has simply asked him if he was on the buyer's side would he then consider that to be an agreement.

Mr. Porter: This witness is not an expert witness to be put hypothetical questions to.

Mr. MacIntyre: That is what we thought last week.

Mr. Leisure: He is not a buyer.

Mr. Wooden: He buys something.

Trial Examiner Norwood: I think maybe the Counsel can reframe that question and make us all happier.

Mr. Wooden: I hardly know how to go about it. I will pass it over for the time being, at any rate.

By Mr. Wooden:

Q. Mr. Coogan, has it been the policy of the Alpha Company to refuse to quote f.o.b. mill because it would prevent the company meeting competition?

A. Yes, it would prevent us from meeting competition at the market place which is the final destination of the cement.

Q. Does meeting competition at the destination
24328 mean making your delivered prices there the same as the delivered prices of your competitors?

A. It is the aim of our company to meet the lowest prices at any destination, and we have no interest in any further identity of prices.

Q. Can't you answer my question directly?

Trial Examiner Norwood: Read the question.

A. I did.

(Question read as follows:

"Q. Does meeting competition at the destination mean making your delivered prices there the same as the delivered prices of your competitors?")

Trial Examiner Norwood: Can you answer that "yes" or "no"?

The Witness: Why, I would say no.

By Mr. Wooden:

Q. Well, your delivered prices at given destinations are ordinarily the same as your competitors', aren't they?

A. Mr. Wooden, I stated plainly that our company aims to meet the lowest price at a destination. Beyond that we have no interest.

Q. Well, I still ask you whether ordinarily your delivered prices at given destinations aren't the same as your competitors?

24329 A. My answer is that we always try to make them the same as our lowest competitor.

Trial Examiner Norwood: Well, do you succeed in that as a usual thing?

The Witness: Usually, yes.

24330 By Mr. Wooden:

Q. I understood you to say that you did not make a practice of quoting f.o.b. mill, because it

would prevent you from meeting competition at the destination.

A. Yes, that is correct.

Q. And by the same token I gather that you quote delivered because it enables you to meet competition at destination; is that right?

A. That is the point where we meet the competitive impact.

24338 Q. Don't you have a substantial freight advantage in the vicinity of your mills compared to distant mills that come in there and sell?

A. Well, yes, of course.

Q. Yes.

A. When you confine it to distant mills.

Q. Yes.

Did you have an advantage of 24 cents a barrel on that Tygart River bidding,—an advantage of 24 cents a barrel on the freight?

A. Yes, sir; we did—no, excuse me, I want to correct that.

Q. How much was it?

A. We had an advantage of 14 cents.

Q. All right.

Wouldn't it give the buyer in the vicinity of your mills an advantage if you were to quote f.o.b. mill there?

A. That depends entirely upon what price we set at our mill.

Q. In the case of a mill of yours that is not a basing point, wouldn't it give the buyer in the vicinity of the mill an advantage if you sold f.o.b. mill?

24339 Mr. Leisure: Now, if Your Honor pleases, I object to that. There is nothing in the evidence to show that the mill at that place was a mill that was not a basing point, and we are dealing with a hypothetical situation here. We ought to deal with the facts. It is purely argument, and I think we should cease arguing with the witness.

Trial Examiner Norwood: I think he is asking him about a particular transaction here which is in evidence.

Mr. Wooden: And about a mill that is not a basing point.

Mr. Porter: But the witness has directly answered the question, Your Honor please, and said it would depend altogether upon what mill price he charged,—it might be a lower price or not, depending on the price charged.

He has answered the question once.

Trial Examiner Norwood: Read the question, please.

(Last question read by Reporter.)

A. It depends entirely upon what base figure you use at that mill.

By Mr. Wooden:

Q. Of course you might make your base figure $5, in which case it would not be any advantage; but, if you gave the buyer the benefit of the freight, or part of the freight, between the basing point and the vicinity of your
24340 mill, wouldn't it give him a lower price?

A. Well, as business people we are not looking for any opportunity of giving things away.

Q. That is all right.

A. We are trying, as far as possible, to make a little profit for our company.

Q. But that is not an answer to the question. It would give the buyer a lower price, wouldn't it, if you made a mill price at your non-basing point mill?

A. Dependant upon what price you put in at that basing-point mill.

Q. If you gave the buyer a part of the freight advantage that you have, it would?

A. To a specific point where there is a difference in the freight rate from our mill, and from some other basing mill, yes.

Q. You say you quote delivered prices because it enables you to meet competition. Aren't you interested in beating competition, or just in meeting it?

A. I am interested in meeting the lowest price which I find in any given market.

Q. You are not interested in beating the lowest price that any competitor offers?

A. No, sir; I am not.

Q. Is it your conception of competition that a
24341 competitor who has an advantage over another competitor, whether in freight or otherwise, should not use that advantage in his price?

A. Mr. Wooden, you would not use that advantage very long, because the other man would meet whatver price you make.

Q. Well, regardless of that,—is it your conception of competition not to use an advantage that you have?

A. I certainly wouldn't want to give away all advantages that we had; I would like to retain some for our own company.

Q. Does not competition sometimes require people to give away advantages that they would like to keep?

A. Well, of course, I only know about our own business.

24342 Q. Yes, in your experience, though, isn't that a fact?

A. I think that is up to each individual to make up his own mind whether that is necessary or not.

Q. Well, haven't you had any experience in the cement industry where you have had to give up some advantage, or part of some advantage, because competition forced you to?

A. Why, yes, there have been many times where we have had to meet competition which we did not originate, and which we did not like, but we were forced to meet it.

Q. Well, you have, as I understand it, a freight advantage of 14 cents there at your Manheim mill, which is not a basing point, you added that 14 cents per barrel to the base price at some other point to get the price at or near the Manheim mill, is that right?

24343 A. No, we do no such thing.

Q. Well, the Manheim mill is near Grafton, is that right?

A. That's correct.

Q. How do you determine the delivered price at Grafton?

A. By taking the lowest combination of mill base figured, plus the freight rate, and quoting that price at that destination.

Q. What is the base which together with freight

24344 makes the lowest combination.

A. From memory, I would say Universal, Pa.; but I am not quite sure of that.

Q. What is the freight from Universal to Grafton?

A. Forty-four cents a barrel.

Q. What is the freight from Manheim to Grafton?

A. Thirty cents.

Q. There is the 14 cents' difference.

A. Yes, that particular point.

Q. You have Universal selling in Grafton?

A. Yes, sir.

Q. And you have a 14-cent freight advantage over Universal—

A. Yes, sir.

Q. —in Grafton?

Do you sell in Pittsburgh from your Manheim mill?

A. A little, not much.

Q. How is the Pittsburgh price made up?

A. That's made up by Universal, as I remember it.

Q. Does Universal have a freight advantage over you in Pittsburgh?

A. Yes, sir.

Q. How much?

A. Approximately 20 cents, I think it is, but it may be 25; I am not sure.

24345 Q. When Universal comes into Grafton you use no part of that 14-cent freight advantage to keep them out; is that right?

A. I have never yet found a figure that kept my competitors out of any market.

Q. When you go into Pittsburgh, Universal uses no part of that 20-cent freight advantage to keep you out of Pittsburgh; is that right?

A. I don't think there is any figure that Universal could set that would keep us entirely out of Pittsburgh.

24346 A. Universal gets 20 cents a barrel more for the cement that they sell in Pittsburgh than we get for what we ship in there from Manheim.

24347 Q. When you say "gets," you mean the mill net?

A. The mill net, yes.

Q. Well, isn't that a sample of what you find in the industry generally, that the freight advantage that one mill has over another is not exercised?

A. I think that would depend entirely upon whether it is a base or non-base mill.

Q. Well, take both cases, take whether they are base mills, take the case of a base mill, and then take the case of nonbase mill,—what is your answer?

A. Well, any two companies shipping to the same destination, and assuming that they are getting the same price for the cement, the one would get a higher net if he has a lower freight rate.

Q. A higher net by the amount of the difference in

A. Yes.

Q. So then we have a situation where with all sorts of variations in the degree of advantage different mills have in regard to freight rates, the purchaser is quoted the same delivered cost,—that is right, isn't it?

24348 A. I can't answer for what other people do; I can only answer for what price we quote.

By Mr. Wooden:

Q. Well, you say your aim and object always is to meet competition, and make your prices delivered the same—

A. I did not say that.

Q. What?

A. I said my aim was always to meet the lowest price at any destination.

Q. Haven't you found in your general experience, in your long connection with the industry, that the delivered prices at a given destination are ordinarily the same with regard to advantages or disadvantages in freight rate locations of mills?

A. I have stated before that our interest is in meeting the lowest price, and that's what we try to do, and if there are—

Trial Examiner Norwood: That is not answering the question.

Read the question.

Now, listen to the question and answer it.

(Last question read by Reporter.)

A. Ordinarily, yes, that must be so.

By Mr. Wooden:

Q. Do you think it is a competitive situation where the buyer has no advantage in a price way, regardless of which competitor he places his order with?

24350 A. Well, I don't think the identity of prices denotes the absence of competition.

Q. Would the existence of diversity of prices represent price competition?

A. Not in all cases.

Q. You think it would in some cases?

A. It might, yes.

Q. In other words, you think identity of prices and diversity of prices both represent competition; is that right?

A. Yes.

24351 Q. Would it represent competition for the buyer to be able to place his order with a competitor whose delivered cost to that buyer was less than that of other competitors?

A. Yes.

Q. And that is what would occur, isn't it, if the mills in the industry quoted f.o.b. mill?

A. No, sir; it is not.

Q. Assuming the same mill prices?

A. Well, you have got to assume a lot if you say that. As I am telling you, you might quote one car of cement at a destination, under the competitive formula laid down by you, but immediately after that the prices in that territory—in that particular destination—would be met.

Q. Aren't the freight advantages frequently so large that outside mills could not come into given markets without selling at a loss?

A. I have never known any price made in any market that kept competitors from coming in that market.

Q. Even though they sold at a loss?

A. I think at times they might have sold at a loss, as far as total cost is concerned, and maybe not out-of-pocket loss.

24352 Q. Have you sometimes gone into territory where you were at a freight disadvantage to such an extent that you sold at a loss?

A. Our company always tries to get at least our out-of-pocket cost, but there might have been occasions in some markets where we have sold cement at a loss; there have been such occasions, and we have continued in those markets rather than to forsake the markets and then attempt to get them back under later conditions.

Q. Do you mean sold at a loss compared to your out-of-pocket cost or to your total cost?

A. I told you that we try, in so far as possible, to get our out-of-pocket cost, but I wouldn't want to say that we had succeeded in a hundred percent of the cases.

24359 Q. Well, isn't the situation represented between Grafton and Pittsburgh this: That where you have an advantage in Grafton, Universal gets in there at the same delivered price as you, while in Pittsburgh where Universal has an advantage, you get in there at the same delivered price as Universal?

A. Yes, I quote the same price, if the Universal's price is the lowest one I find in those two markets.

Q. Now, coming back to this matter of an agreement, and referring to the action of the Trade Practice Committee, or, rather, the action of the Southeastern Division upon the plan of marketing cement. I believe you agreed that that was an agreement.

(No response.)

Mr. Porter: If Your Honor please, I object to the question because the witness did not say the statement was true.

Trial Examiner Norwood: He hasn't finished the 24360 question yet.

Mr. Porter: Well, he said that he agreed to that and admitted—

Mr. Wooden: That is preliminary.

Mr. Porter: He said "if this statement were true, he thought it would be"—

Trial Examiner Norwood: Have you finished your question?

Mr. Wooden: No, I hadn't. It was preliminary.

Trial Examiner Norwood: Finish your question.

By Mr. Wooden:

Q. Now, would you say that the action of the Trade Practice Committee embodied an agreement when the committee voted to present the plan of marketing cement to the Procurement Division in July, 1935?

Mr. Porter: I think that the witness should have his attention called to some specific exhibit, Your Honor. I don't think it is fair unless the witness knows what he is talking about. The witness hasn't testified to anything of that kind on direct examination.

By Mr. Wooden:

Q. Showing you Commission's Exhibit 591-B and referring you to the third paragraph where it reads: "After considerable discussion motion was made by Mr. Lucas, seconded by Mr. Warren, and unanimously carried that
24361 the committee in their contacts with the Procurement Division present the plan of marketing cement to the U. S. Government as included in the announced policy of a number of individual companies in the East and Middle West and report back," and so on

A. I don't see where that constitutes any agreement.

Q. Well, that is my question. You don't consider the action of the committee in taking that vote to do that thing constituted an agreement among the members of the committee?

A. I think the minutes speak for themselves. It says just what—exactly just what was done by the committee.

Q. Well, of course—

A. And it was presented to the Government the trade policies which had already been announced by many of the companies and asked them to purchase cement under the policies of the different companies.

Q. Well, I knew that the minutes spoke for themselves, Mr. Coogan, but I wanted to get your conception of what the minutes said on that, constituted an agreement in your opinion as you have used it in your testimony.

A. It does not.

Q. You have changed your mind on that since yesterday?

A. No, sir.

Q. Even though the record of yesterday shows that you did testify that you thought that that was an agreement?

A. We didn't refer to that particular thing.

24362 Q. Well, the same sort of thing.

A. I don't know whether it was the same or not, but we didn't refer to that.

Q. All right. Well, you agreed that the plan announced and circulated by the Southeastern Division on this marketing plan represented an agreement, I believe?

A. No. I said if the statements as made were true that I thought that they constituted an agreement as to the interpretations of policies which had been issued by companies months before that meeting.

Q. Weren't those announcements by various companies put out after discussion and conference with the Retail Dealers Association representatives?

A. No, sir; ours was not.

Q. Wasn't your Mr. Fellows in attendance at some of those discussions?

A. I have seen in one of the exhibits where it was claimed that he was at one meeting, but I never had any report of that meeting.

Q. When the Alpha Company refused to bid on Pro-

curement Division requirements in the spring of
24363 1938, you said, I believe, that it was because it called for direct sales to customers which you felt should be handled through your dealers; isn't that correct?

A. That was only one of the objections. There were many others.

Q. Yes.

A. I didn't think—I told in my direct testimony that I didn't think the inquiry was put out in good faith, and we wanted no part of it.

Q. Yes. Well, wasn't your refusal to bid on that occasion simply standing by the plan of marketing that was recommended by the Trade Practice Committee to be submitted to the Procurement Division?

A. When we made our decision on not submitting the bid on that inquiry, we paid no attention to anything else except the particular inquiry before us and made our decision based on that.

Q. But you testified that that was one of the reasons why you wouldn't bid because it interfered with your sales to dealers?

A. That was only one.

Q. Yes. All right.

A. There were many others.

Q. And wasn't that just standing by this action
24364 of the Trade Practice Committee in putting this up to the Procurement Division?

A. Mr. Wooden, if there had never been a thing written or said about the cement industry or by any individual in it, and I got such an inquiry as that one from the Procurement Division, I wouldn't quote on it.

24368 Q. Were you afraid that your plants might be called on to supply more cement than you were able to furnish?

A. Mr. Wooden, I have told you many times that that contract from the seller's viewpoint was such a one-sided contract that we would not quote under any circumstances on it.

24373 Q. Mr. Coogan, with respect to the Procurement Division's request for bids on quarterly requirements in the spring of 1938, had it not been the practice of the industry at one time, and the practice of your company, to bid on even the annual requirements of States for their highway business?

A. With certain quantity expansion.

Q. Certain maximum quantities?

A. There were maximum quantities mentioned in the inquiry, you could quote on as much or as little of it as you pleased, and when the award was made it was made for a definite quantity.

Q. What is the difference between that and a request of the Procurement Division for bids on the annual
24374 requirements estimated to run as high as 3 million barrels?

A. What—if you will give me the bid I will—

Q. You cannot answer it out of your general knowledge; is that right?

A. I told you, Mr. Wooden, that we made up our minds that we would not bid on that Procurement inquiry you mentioned; further, that we thought it was an entrapment at the time that it came out, and we just felt that we would not quote on it.

Q. You have not yet been able to tell me wherein you thought you would be entrapped if you bid on it, according to the specifications.

(Indicating) Here is Commission's Exhibit 1339, the Procurement Division's invitation, and I am also showing you Commission's Exhibit 1918-A to F, inclusive, being the bid of the Alpha Company on Wisconsin Highway Commission requirements in 1931, and I would like for you to tell me the difference as to bidding on definite requirements as represented by those two documents (indicating)?

A. Because our business experience has taught us that there is a great deal more probability of the Wisconsin Highway Department using that quantity of cement than there is for the Procurement Division using the quantity stated in their bid.

Q. Is that your greatest and only objection?

A. No, I have stated many objections to the Good Friday bid.

24375 Q. I mean, on that particular phase of the Good Friday invitation, is that your only objection?

A. I just told you there are many other objections to the Good Friday bid, so that is not my only objection, no.

Q. To this phase of the Good Friday bid, I said, Mr. Coogan.

A. I still can't understand that.

Q. You do not understand that we are talking about the unspecified requirements that you were going to bid on?

A. If anybody wanted to bid on the Good Friday bid, they could; as I remember it, they could specify a limit to the quantity, if they wanted to.

Q. Isn't that just like Commission's Exhibit 1918, on which you bid?

A. I told you there is much more definite chance of Wisconsin taking that cement under their inquiry than there is in the Procurement Division.

Q. More chance of the Wisconsin Highway Commission taking that quantity of 1,300,000 barrels here than there was for the Federal Government taking 3,000,000 barrels in the course of 3 months' time, over a wide stretch of territory?

A. Of course, we could not quote over a wide stretch of territory. We had no idea what the Government would take up.

Q. Isn't this Wisconsin bid merely an option that the State could exercise or not after you bid on it?

A. After we bid on it?

24376 Q. Yes.

A. Well, after we bid on it, but not after they closed the contract with us.

Q. Of course not. But when you bid, you gave them an option to take the quantity bid on at the price you bid, did you not?

A. For a certain specified time, we left it open.

Q. How long a time?

A. (Witness refers to exhibit) Twenty days.

Q. You mean 20 days until the time the contract was entered into, do you not?

A. Yes, sir.

Q. And after that how long a time before you might be called on to fill the requirements of the contract?

A. It covers delivery for that year with a provision that on any uncompleted projects on which shipments have been started they would run over into the following spring.

By Mr. Wooden:

Q. As a matter of fact, didn't you bid on some State contracts where you did not know but what you would have to make delivery ov . a period of even two or

24377 three years, at that price?

A. I don't remember any such bids.

Q. Didn't you ever bid on the Louisiana requirements, without knowing but what you would have to ship for several years under the requirements, and did not know how much you would have to ship?

A. I would want to see the specific contract, because I don't remember that there was anything quite as indefinite as that.

Q. There is one difference, isn't there, between the Procurement Division invitation and the Wisconsin invitation, Commission's Exhibit 1918, and isn't that difference the fact that the Procurement Division did not specify any destinations, while the Wisconsin invitation specified all the destinations?

A. There is that difference.

Q. That is an important difference to you, too, is it not?

A. I told you that, in connection with the other objections which I have stated, to the inquiry.

I don't understand that we have to quote on an inquiry just because we get it.

Q. Neither do I contend you do, Mr. Coogan.

Is it not a fact, Mr. Coogan, that under the Code, N.R.A. Code, as approved, that the Federal Government was given the right to buy on a requirement basis,—quarterly requirement basis?

24378 A. Now, that was in Article XI, as I remember.

Q. Yes. Do you remember it?

A. I think that there was some such provision on Article XI, which stayed in the Code for about two weeks.

Q. "Which stayed in the Code." Article XI went out, anyway, didn't it?

A. (Witness makes no response.)

Q. I will modify my question to ask whether the Code of the industry, as approved in December, 1933, did not provide that the United States Government should be sold under contracts for delivery periods as specified in formal requests for bids?

Mr. Leisure: If your Honor please, I want to object to this method of examination. All that can be argued in Mr. Wooden's brief. It is in evidence.

Trial Examiner Norwood. He is trying to show an inconsistency.

Mr. Leisure: Well, it is in evidence, and he is just asking the witness what the Code shows.

Trial Examiner Norwood: He is asking the witness to explain any differences between the circumstances where he bid and the circumstances where he failed to bid. He has that right.

Mr. Wooden: I am going behind his explanation. I have that right on cross-examination.

Trial Examiner Norwood: He has a right to do
24379 that. Objection overruled.

A. Well, this doesn't say what you said it said.

By Mr. Wooden:

Q. Well, what does it say?

A. It says "United States Government, sell under contracts for delivery periods as specified in formal request for bids."

Q. Isn't that the way I read it?

A. No, you said quarterly contracts.

Q. Well, I said I have changed my question when I handed you the document. In other words, it goes further than that. Wasn't that a more uncertain thing for the seller than the case of the quarterly contracts to sell on that basis?

A. That would depend entirely on what the inquiry stated. That says there, "as stated in the inquiry," so it would depend entirely on what the inquiry states.

Q. But in the spring of 1938 you refused to sell the United States Government, or quote under contracts for delivery periods as specified in the formal request; isn't that true?

A. I have already stated our reasons for refusing to bid on the April, 1938, letting. I have made it just as plain, and I think I have recited all of our objections to it.

Trial Examiner Norwood: Does that answer the question?

Mr. Wooden: I think it doesn't, your Honor, but nevertheless I will pass on.

24380 By Mr. Wooden:

Q. Now, didn't the Code of the industry as approved in December, 1933, provide that counties, parishes, and cities should be sold on a calendar quarterly requirement contract?

A. That is correct.

Mr. Leisure: What is that exhibit number, please, Mr. Wooden?

Mr. Wooden: 557.
Trial Examiner Norwood: Commission's?
Mr. Wooden: Yes.

By Mr. Wooden:

Q. Have you continued to sell counties, parishes, and cities on a quarterly requirement contract basis?

A. Yes, sir; we do.

Q. Then why do you refuse to sell the Government, Federal Government, on the same kind of a quarterly basis?

A. Mr. Wooden, I have recited so many objections to that that I can't confine it to simply one objection. Now, I have tried—

Q. Well, I am trying to confine—

A. ——to tell you why we didn't quote and why we made up our minds not to quote on that inquiry.

Q. I am trying to confine it to one particular objection and you want to talk about generalities. I want to talk about this one particular thing.

24381 A. Well, I won't confine it to one particular thing. I can't.

Q. Well, we will see.

Didn't the Code provide that railroads should be sold on a calendar quarterly basis for general requirements?

A. Yes, sir.

Q. Have you continued to do that with railroads?

A. Yes, sir; and we have never had any difficulty with them overestimating their quantities, either.

Q. What basis do you have for the inference that the Federal Government has overestimated its requirements any more than counties, States, and railroads?

A. Because at the time we quoted on requirements of counties and railroads they tell us what work is projected and about the quantity of cement that will be required for that work.

Q. Didn't the Procurement Division estimate its requirements at 3,000,000 barrels?

A. Yes, according to their inquiry I think they estimated it at 3,000,000 barrels, but they didn't state where, when, or how it was to be used, or anything else about it.

Q. That was your greatest objection and the greatest point of difference between the two, wasn't it?

A. That was only one of my objections.

Q. It is a very important point, though, isn't it?

A. It was one of my objections.

Q. Wasn't it an important objection?

24382 A. Not any more important than my other objections. I won't say that it was any more important than the other objections that I stated.

Q. What are the others that are as important as that one?

A. I have already stated them on my direct testimony.

Q. Well, sometimes the witness is expected to restate what he has stated on his direct testimony.

A. If you will give me the copy of the Good Friday invitation I will tell you.

Q. You understand, my question is the relative importance of these various points, not the question as to just what your objections were. You have covered that.

Mr. Porter: Your Honor, I think I shall have to object to that question. I don't think it would be proper to ask the witness the relative importance of wearing a gray suit or a brown suit. He has a good many objections which in the aggregate made him not bid; to ask him to say this particular objection was of more importance than another isn't a proper question. I object to it.

Trial Examiner Norwood: Objection overruled.

Mr. Wooden: In other words, if a man testifies he weighs 175 pounds in his clothes I can't find out how much to allow for his clothes?

The Witness: May I have the question again, please?

Mr. Wooden: I was seeking to get from the wit-

24383 ness some idea of the relative importance of the various reasons of various objections he had to this Procurement Division proposal and which ones were as important as the one that he said was one of the important ones, about the lack of destinations.

A. I think I must state all of my objections together, and I would not want to go into the relative importance of any of the objections. I think they all must be considered together.

By Mr. Wooden:

Q. Now, referring again to the Code, Commission's Exhibit 557, were States buying for highway construction permitted under the Code to buy on a requirement basis?

A. Well, this Code covers purchases for use by State

forces under quarterly contracts for repairs and maintenance.

Q. But only for repairs and maintenance?

A. This paragraph provides: "Purchases for use by State forces. If any department of the State undertakes construction work conforming to the general definition of a specific works project, sell under specific work contract for requirement of the character of repairs and maintenance, sell under calendar quarterly requirements."

Q. Was that provision modified by some interpretation of the Code Authority?

A. I don't remember that, Mr. Wooden.

Q. Didn't the Code Authority hold that States
24384 should not be sold for highway requirements on annual requirement basis?

A. If there was such a ruling made it is a matter of record, but I don't remember every ruling that they made.

Q. Was the Alpha Company's practice with regard to selling cement on a requirement basis—what has that been since the Code?

A. As a matter of fact, very few States have purchased their cement requirements since the Code?

Q. What has been the Alpha Company's practice in quoting and selling States on a requirement basis?

Mr. Leisure: Do you mean since the Code?

Mr. Wooden: Yes.

A. Every inquiry which we have had where a State buys direct, there has been a quantity mentioned, and we have quoted on that quantity and accepted under that bid an award for whatever the State wanted to give us.

By Mr. Wooden:

Q. In other words, you have quoted the States on a so-called requirement basis?

A. As a matter of fact, there are only two States that I know of that are still buying cement.

Q. What is the answer to my question?

24385 A. And those two States we quote on a requirement basis.

Q. What other difference can you point out between quoting the States on a requirement basis and refusing to quote the Federal Government on a requirement basis other than that in the case of the States you knew the destinations, and in the case of the Federal Government you didn't?

A. And in a general way we know the general work that has been projected when we quote to a State. We know what their highway program is, and we are able to handle it with a little more certainty than we are such an inquiry as to the Procurement Division.

Q. Didn't you know that certain definite projects were being planned in case of W.P.A. requirements such as harbor projects or a gymnasium or a swimming pool, and things like that?

24386 A. We had no information as to what they projected.

Q. Referring to Commission's Exhibit 262, which is a petition of the Marquette Cement Manufacturing Company for modification of the cement Code, a statement is made on page 9 of that exhibit, that "in other years we have heard the argument made that the practice of permitting the States to buy cement upon a requirement basis was injurious because the letting of a large contract was apt to upset prices and to induce competitive bidding by cement manufacturing companies for the business."

Had you ever heard that argument?

A. Why, I think I had heard this particular argument that is mentioned in this; as I remember, this was—

Q. Do you think it is true?—

Mr. Porter: Let the witness finish his answer, please.

Trial Examiner Norwood: Yes.

Mr. Wooden: All right.

A. Of course I don't know what the other man thinks. I, personally, have no such ideas as are expressed in that statement.

By Mr. Wooden:

Q. You would not agree that the one reason for your declining to bid on the Procurement Division invitation was that it might upset prices?

A. Why, no. I never even gave consideration to that.

24387 Q. I am referring to page 24233 of the record, beginning with line 21 (handing official record to witness).

You say here that you could not under any possibility meet the competition of you were bidding on a uniform mill price basis. Isn't this word here in line 23 that reads "low"—should that not be "mill"?

A. Yes, that should be "mill."

Q. Why is it that you gave no thought as to its effect on competition in the case of the Procurement Division invitation, while here with regard to these agricultural department specifications, including the equalization clause, you gave a good deal of thought to it?

A. Well, Mr. Wooden, I can't tell you—I have told you that when we got that we considered it a while, considered all the factors, and then we thought we were exercising a right which we had as a seller in deciding not to quote on that particular business.

Q. Well, it is your position, is it not, that to bid on the f.o.b. mill basis, that you could not meet competition?

A. I—I couldn't meet the lowest price at the destination where we meet the competition.

Q. Couldn't you even go below it to destinations where you had advantages in the way of freight, or otherwise?

A. Well, of course, we were not trying to give away any little advantage that we might have.

24388 Q. Do you aim to retain all the advantage that you have?

A. I aim to retain just as much as possible.

Q. Yes. Just as much as competition will permit you to retain?

A. I said as much as possible.

Q. Yes.

Trial Examiner Norwood: I think we covered that point, anyway.

By Mr. Wooden:

Q. Now, let us come to this Tygart River bidding that you testified about yesterday.

I understood you to say that you followed the principle of the T. V. A. bidding on the first bid by taking $1.30 at the second nearest mill; is that right?

A. Second nearest market, freightwise, yes.

Q. And what was that?

A. That was the Pittsburgh.

Q. Universal?

A. Yes.

Q. Was the Universal base making the delivered price at Grafton, at that time?

A. Yes, sir; it was.

Q. What was the Universal base at that time?

A. I think it was $1.55, stripped.

Q. Do I understand, then, that you bid less than
24389 your commercial price on that bidding?

A. Yes, sir; we did.

Q. How much less?

A. On the first bid I think it was 20 cents less, and on the subsequent bids it was 34 cents less.

Q. Did you discuss with your competitors the matter of putting in bids on the same basis as the T. V. A. bidding?

A. No, sir; I did not; discussed within our own company only.

Q. Do you know which company first filed the price with the Code Authority on that bid?

A. I think we did.

Q. And the first bid, I think, was $1.84 delivered Grafton; is that right?

A. Yes, $1.84, bulk.

Q. And the second bid $1.77 Grafton?

A. Yes, sir.

Q. And the third $1.60; is that right?

A. No—$1.70.

Q. $1.70, right.

That was 14 cents a barrel less than the first bid, then?

A. Yes, sir.

Q. And you got 600,000 barrels out of it, did you not?

A. Yes, sir.

Q. In other words, on the third bid you took
24390 about $90,000 less, or offered to take about $90,000 less on 600,000 barrels than you did on your first bid; is that right?

A. I will say "yes," if I am allowed to make an explanation.

Q. All right.

A. If you want to get all of the facts in connection with this Tygart Valley,—when that inquiry came out it was located so it could be served by our Manheim mill. We had had a scarcity of business at that mill. We discussed the matter within our own organization, and some of our executives favored putting in a price, a flat price, of $1.30 at our mill, that is, a delivered price, based on $1.30 at our mill, and I was the one that felt that inasmuch as the T. V. A. had used this yardstick in arriving at that price for the T. V. A., that there was no reason why we should not apply the same yardstick in arriving at a price for Tygart Valley, and I was able to convince my associates that that was the thing to do.

However, before we got through with the job we were compelled, you might say, to bring our price down to a delivered price based on $1.30 at our Manheim mill.

Q. In other words, if the first bid had not been rejected, and awards made on it, you would have realized about $90,000 more than you did?

24391 A. Well, let us be exact,—$84,000.

Q. That is right, 600,000 times 14.

Did you net at Grafton—what did you net at Grafton on it?

A. My price at Grafton was $1.70.

Q. And you say your freight to Grafton from Manheim was 30 cents?

A. Yes.

Q. Did your commercial price at Grafton remain the same notwithstanding your reduction on the Tygart River bid?

A. Yes, sir; it did.

Q. What was the commercial price?

A. I don't remember the figure; it was approximately 18 or 20 cents a barrel higher than the first bid we had made.

Q. Approximately how many towns are there in the territory where Alpha sells that contain dealers?

A. Well, that I could not give you any idea of. As I said in my direct testimony, we have on our quotation list something like 3,000 dealers in the territory that we serve.

24392 Q. Well, there are a great many more towns in that territory than that, aren't there?

A. Yes, I should think there might be, because I don't think that we have a dealer in every town.

Q. And in some towns you have more than one?

A. Yes, sir.

Q. You are willing to pass title to your cement on sales to the Federal Government at the mill, I understand?

A. Yes, where land-grant rates are involved.

Q. Not unless they are involved?

A. We have never made it a practice of doing it; in fact, the Government has never requested it, no reason for requesting it, unless land-grant rates are involved.

Q. They requested it in the Procurement Division invitation, didn't they?

A. We did not bid on it.

Q. I know, but you said the Government did not request it.

A. Well, we—

Q. And they did in that case.

A. Well, we paid very little attention to that inquiry.

Q. Why aren't you willing to make a price on the same basis that you are willing to pass title?

Mr. Leisure: I want to object to that, Your Honor, again; it is merely argument. The witness has said he never did it because the Government never asked it.

24393 Now, Mr. Wooden is asking why they didn't do something that the witness has said they never had occasion to do. Then Mr. Wooden said, "Why don't you do it?"

Trial Examiner Norwood: I think he said he was not willing to make f.o.b. mill prices except where land-grant rates were involved.

Now, I think this question is proper to elicit—

Mr. Porter: (Interposing.) He did not say he was not willing; he said he did not do it.

Mr. Leisure: He said the Government had not requested it.

Mr. Porter: He said the Government hadn't requested it.

Mr. Leisure: Now Mr. Wooden is asking why they didn't do something.

Mr. Wooden: I asked him why he did not do it in this one case.

Mr. Leisure: And he answers you—

Trial Examiner Norwood: The objection is overruled. Answer the question.

The Witness: May I have the question?

Trial Examiner Norwood: Read it.

(Last question read by Reporter.)

A. Well, I am, where I am willing to pass title I do quote a mill price.

24394 By Mr. Wooden:

Q. Do you contend that you have quoted the Federal Government on f.o.b. mill basis?

A. I claim that we have for the past year quoted them in many cases on a flat f.o.b. mill basis, and prior to that time we quoted them on what we claim is equivalent to a mill base.

Q. You mean the destination cost with the control clause?

A. Yes; sir.

Q. Do you contend that you are willing to quote the Federal Government on an f.o.b. mill basis without knowing where the cement is to be delivered or used?

A. No, sir; I do not.

Q. You would not do that?

A. No, sir; we would not, because it would interfere with the distribution of our cement through the ordinary distribution channels.

Q. And it would also interfere with the identity of delivered prices at destinations, would it not?

A. The matter of identity of prices has nothing to do with it; the other question is the controlling factor.

Q. Well, you say that has nothing to do with it. Do you mean by that that it would not interfere with the identity of delivered prices at destination?

24396 A. Well, it would depend entirely upon the destination, as to what effect it would have.

24403 Q. Has there ever been a time when you did sell to the Federal Government f.o.b. mill without knowing the destination or without a control clause—and without a control clause?

A. Yes, in the history of the Alpha Company there have been such times.

Q. Did that continue up until the time of the N.R.A. Code?

A. No, it did not.

Q. When did it stop?

24404 A. Well, I wouldn't know exactly, but it was several years before the N.R.A. Code.

Q. Did it continue as late as 1930?

A. No, I think not.

24406 Q. Do you contend that you are now quoting the Department of Agriculture f.o.b. mill on the specifications that include the equalization clauses?

A. I do.

Q. Why do you do that if quoting f.o.b. mill prevents you from meeting competition at destination?

A. Well, because I know the destination.

24413 Q. Is it your idea that your use of the control clause during the N.R.A. period was the result of any agreement or understanding with competitors?

A. No, because it was filed as a term of sale by a competitor, and, as far as our own company was concerned, when we saw it we made the same filing, but certainly no agreement.

24414 Q. With the light of your decision in the Procurement Division invitation, would you quote f.o.b. mill if you did not know the destination?

A. I would not quote on an inquiry like the Procurement Division no matter what it said. It was so bare faced, and so bold, that I cannot conceive of any man of good business sense submitting a quotation under that inquiry.

24419 Washington, D. C.,
October 10, 1939.

24423 F. M. COOGAN thereupon resumed the stand and testified further as follows:

Cross-Examination by Mr. Wooden (Continued).

Q. Mr. Coogan, I believe you testified that you were never a member of the board of trustees of the Institute?

24424 A. That is correct; yes, sir.

Q. Do you recall ever having been elected and serving as an alternate trustee at large?

A. No, I do not.

Q. Wasn't there a period when you were chosen as an alternate trustee at large along with Mr. McKelvy to act in place of Mr. G. S. Brown of your company when Mr. Brown wasn't able to be present?

A. No. There were certain meetings where I represented Mr. Brown as a proxy, but I was never elected as an alternate.

Q. I am showing you, Mr. Coogan, Commission's Exhibit 617-D, which is the fourth page of the minutes of the board of trustees of January 11, 1934, and calling your attention to the paragraph at the bottom, doesn't that show that a motion was carried electing you or Mr. McKelvy to act as alternate trustee at large in place of Mr. Brown?

A. There is no provision in the by-laws of the Institute providing for the election of alternates in that manner. I

never knew of that. I did represent Mr. Brown as proxy, and the by-laws of the Institute do not provide for electing alternates in that manner.

Q. Does that refresh your recollection, that you
24425 were elected as an alternate?

A. No, I never considered—I was never notified and never considered myself an alternate or trustee. I acted as proxy.

Q. Well, didn't you, serving as proxy or acting as proxy for Mr. Brown, participate in meetings of the board of trustees?

A. Yes, I did, when I attended such meetings as proxy; yes, sir.

Q. Do you recall making motions for an amendment of the Code, N. R. A. Code, at meetings of the trustees of the Institute?

A. I think I might have made motions for—having to do at the time of preparation of the Code, and that was at one of the meetings where I was representing Mr. Brown.

Q. Do you recall having moved an amendment of the Code at the trustees' meeting of the article on costs and price cutting?

A. I don't think you have referred to it—as I remember it, that is not the proper title. It is the method of cost computation.

Q. Well, I am showing you Commission's Exhibit 621-F, a portion of the minutes of the trustees' meeting of August 15, 1934. The minutes show that you moved for the amendment of the article on costs and price cutting, and specified the character of the amendment.

A. If you look in the Code you will find that that paragraph is "Method of Cost Computation."

24426 Q. All right.

Did I understand you to say on direct examination that meetings of the Code Authority and the trustees of the Institute were wholly separate?

A. Yes, I think that is correct.

Q. And that members of the industry who were not members of the Code Authority did not attend Code Authority meetings?

A. I said there might have been times when somebody was called in for information, and they might or might not have been members of the board of trustees.

Q. Was attendance barred to non-members of the Code Authority?

A. Well, we didn't lock the doors.

Q. I mean, was it barred except as you issued special invitations?

A. Well, I don't remember of anybody attending the meetings except those that were invited in. It is possible that somebody dropped into the meeting; they were not held behind locked doors.

Q. Did the trustees of the Institute ever give any instructions to the Code Authority?

A. Not that I remember of at any time while I was a member of the Code Authority, except in handling
24427 the Compendium of Trade Practices, I believe that was referred back to the committee.

Q. That was after the Code Authority, as such—

A. That was the Trade Practice Committee, yes.

I don't think that ever had anything to do with the Code Authority during my term of office. I was only a member of the Code Authority that we were on.

Q. (Indicating) I am showing you Commission's Exhibit 621-F, the same page of the same minutes to which I called your attention a moment ago, at which you made a motion to amend the Code, and calling your attention to the third paragraph on it, the minutes show that the Code was read by Mr. Raeder, and the chair recognized Mr. Frank H. Smith, who moved that the Code Authority be instructed not to shorten the five-day lag required for changes in revisions or price terms. That was seconded by Mr. Affleck, and unanimously carried.

Do you recall any such action as that?

A. This was during the preparation of the Code.

Q. Well, it was after the Code was in effect, was it not?

A. (Witness examines Exhibit 621-F.)

Q. It was in August, 1934.

A. Well, I have no particular recollection of that provision. I don't remember that that was even discussed, and I was not a member of the Code Authority during August of 1934.

Q. But you were acting at that meeting—

24428 A. As a proxy.

Q. As a proxy for Mr. Brown?

A. Yes, sir.

Q. Well, what have you to say as to the trustees of the

Institute giving instructions to the Code Authority as indicated by these minutes? Do you consider that they had any such right?

A. No, but I think the industry had a right to suggest additions or changes in the Code at any time.

Q. When you say "industry" do you mean the organization representing the industry?

A. Well, the Institute was the industry, because I think every manufacturer, except one or two, belonged to it.

Q. Can you tell me from your minutes, or from your recollection, who was present at this meeting of August 15, 1934, to which I just directed your attention, representing the Government, or the N. R. A. (handing exhibit to witness)?

A. Yes, Mr. Frank H. Smith represented the N. R. A. in our industry.

Q. Who is he?

A. He was president of the Lawrence Portland Cement Company, and he was designated by the N. R. A. as—I can't give you the exact designation—but he was appointed by them to represent the N. R. A.

Q. You mean that an industry man represented the Government?

24429 A. I do.

Q. Was there any man present at that meeting, or any other meeting of the Code Authority, or the board of trustees, that represented the Government?

A. You mean at this particular meeting?

Q. Yes.

A. (Witness refers to exhibit). Not from these minutes. These minutes do not indicate that there was.

Q. Can you name anyone, other than Mr. Smith, who attended any of your board of trustees' meetings of the Institute as a representative of the N. R. A., or of the Government?

A. Well, I can't—I can't specify any particular meetings. I know that we had a representative of the N. R. A. present at the meetings. Now, whether they were Code Authority, or trustees, I don't know. One of them was Mr. Jansen, and we had Colonel—I can't think of his last name now—but he was present at various meetings that I attended.

Q. (Indicating) I am now showing you, Mr. Coogan, Commission's Exhibit 2266-A to F, inclusive; did your company have papers like that in its possession?

A. I don't think that we had any papers like this. We had instructions to our sales department as to the policies which we had printed and circulated.

Q. Well, this is headed "Method of Marketing Cement." Did you put out to your salesmen, or to any-
24430 one in your organization, instructions like those?
24431 A. We issued instructions to our sales department every time we changed our policy. We had instructions out when the Code was in effect, and we distributed those to our own organization. Now, whether we had anything—I don't think we had anything just like that, but we probably sent out some instructions.

Q. Did you send them out in that form?

A. Well, that I couldn't answer.

Q. Did you have them in your office in that form?

A. In this form (referring to Commission's Exhibit 2266)?

Q. Yes.

A. I don't think so. As I remember it, it was in another form. We had them in a very wide sheet.
24433 Q. Did that document, Commission's Exhibit 2266, represent the policy followed by the Alpha Company?

Mr. Leisure: I object to that now. Here is a document that has not been shown, so far, that if was issued by this company, as far as I know. If it was issued by this company, I have no objection to the question, but we ought to have that preliminary question on the record first.

He says "Does this document"—which so far as I understand the testimony the witness has said that he knows nothing about—he says "Does that represent the policy of your company?"

There is no preliminary connection between the two questions at all.

Trial Examiner Norwood: Well, he can show him
24434 that paper, or any paper, and ask him if it represents the policy of his company.

The objection is overruled.

The Witness: Do you mean that I am to go over this (referring to exhibit)?

Trial Examiner Norwood: Look at it.

The Witness: And read this and say whether that represented it?

Trial Examiner Norwood: I think so.

The Witness: Well, it would take me hours to do that.

Mr. Wooden: No.

The Witness: Now, if you want me to do that, I will do it.

Trial Examiner Norwood: That seems to be what he wants.

The Witness: All right.

Mr. Wooden: It would not take him anything like that.

The Witness: All right, but I would have to have a copy of our policy of April, 1935.

Trial Examiner Norwood: Well, suppose you read that first page and see if that represents any part of the policy of your company. Could you do that?

The Witness: Well, in a general way, so far as
24435 the policy of the company is concerned, the policy which we distributed to our customers I think in April of 1935 was not greatly different from that distributed by other companies. Now, I won't attempt to go on the other side and to say whether these interpretations agreed in every case with the interpretations which our own company put on them.

24437 By Mr. Wooden:

Q. Will you produce a copy of the instructions that you issued to your salesmen or to your branch offices supplementing the announcement that you made to the dealer customers in April, 1935?

A. I don't know that I can find any of that. I think that I have produced and turned over to Counsel all of the material which I could find bearing on this case.

24439 Q. Does the Alpha Company own any of the stock or bonds or other securities of any other company?

A. No, sir; not a share of stock or not a security of any kind of any other company.

Q. Does any other cement company own any of the stock or bonds of the Alpha Company?

A. You are confining this to companies, Mr. Wooden?

Q. Yes.

A. Yes, I think there is one cement company that has a very small amount of stock in the Alpha Company.

Q. And what is that?

A. The Lehigh Company I think own approximately 1750 shares or less than three-tenths of one percent of the stock of the Alpha Company.

Q. How long have they held that?

24440 A. They have held that for a good many years. I can't say just how many.

Q. Is that common stock?

A. Common stock is the only kind of stock the company has issued.

Q. I think you covered the question of competition between your Missouri mills and the Boettcher mills, and in that connection did you say that the Missouri mills did not compete with the Boettcher mills in Arkansas?

A. No. I said they competed slightly with the O. K. mill of the Boettcher group in parts of Arkansas, parts of Louisiana, and parts of Mississippi.

Q. Doesn't that O. K. Mill also compete with your Missouri mills in Missouri?

A. In the southern part of Missouri to a small extent.

Q. Do the Boettcher interests still have a stock interest in the Alpha Company?

A. Yes, sir; they have.

Q. What is the extent of that?

24447 A. As I remember it, to the best of my knowledge, the Boettcher—the Boettchers—I don't know what is the Boettchers'—they have about 8 percent of the stock of the Alpha Company.

Now, I want to say that Mr. C. K. Boettcher was never a trustee of The Cement Institute or never had any connection with The Cement Institute.

By Mr. Wooden:

Q. He was son of the man who was a member of the trustees?

A. Yes, sir.

24457 Q. Did you have any expression on it from any associations of dealer customers?

A. Oh, at the time the delivered price developed in our industry, dealers' associations were almost unknown.

Q. You mean lumber dealers' associations?

A. Yes, lumber dealers' associations. We were not in the western markets in the early days of the game, except from our eastern mills, and we did not come in

24458 contact with these western lumber organizations, and I think, so far as I can remember, dealer organizations did not come into the picture much before 1912.

Q. Well, they had prosecution of dealer organizations before that, including the eastern States case.

A. What kind of dealers?

Q. Lumber dealers.

A. Well,—

Q. Lumber dealers handled cement, didn't they?

A. In the early days; not generally, no.

Q. Do you mean they did not handle it in the decade between 1900 and 1910?

A. I would not— You will find some lumber dealers that handled cement, but in the early days cement was competing material with lumber.

Q. Well, in 1903, as shown by one of your exhibits, you quoted the mill price to dealers and showed on it the freight per barrel to the dealers' destination. What advantage did the dealer have in having a delivered price compared to that method of quoting?

24439 A. I testified that we quoted both ways in 1903, and based on the experience gathered from the different methods of quoting we decided that it was the better way for us to handle our business to quote delivered prices after knowing how our customers felt about it.

By Mr. Wooden:

Q. Well, wouldn't a mill price with freight per barrel shown to destination give the dealers everything they wanted to know about a delivered price?

A. Evidently it did not, because the dealer asked for delivered prices.

Q. Mr. Coogan, was there one period in the Alpha Company's history when it quoted either delivered or f.o.b. mill depending on the wishes of a particular customer?

A. Yes, dependent upon the wishes of the customer and the class of work involved; both entered into the consideration in about 1903.

Q. Now, weren't there still some customers who continued to wish an f.o.b. mill price later?

24460 A. May I have that question?

Trial Examiner Norwood: Read it.

(Question read.)

A. I would have to ask you what you mean by "later," Mr. Wooden.

By Mr. Wooden:

Q. After the time that you began to sell delivered entirely.

A. I have no direct recollection, but I have no doubt that we might possibly have had an occasional request for a mill price.

Q. During the period when you weren't quoting mill prices, was there any substantial variation in the delivered price made by different mills?

A. May I have that question, please?

Trial Examiner Norwood: Read it.

(Question read.)

A. Well, of course, when we were not quoting many delivered prices, we didn't control the sales. I have explained that at first we handled our business through a general sales agent and went from there to the distributor, and we, generally speaking, did not take over our own sales until about 1903.

Q. But in 1903 you weren't quoting f.o.b. mill at times?

A. At times, yes.

Q. Well, during that period, was there any substantial variation in the delivered prices quoted by various 24461 mills at the same destination?

A. I think you have got two questions in one. You asked me about delivered price and then you asked me about prices at destination. Now, which am I to answer?

Q. Well, I assume that delivered price and prices at destination are the same.

The Witness: Will you read the question, please? I thought you said mill prices.

(Question read as follows:

"Q. Well, during that period was there any substantial variation in the delivered prices quoted by various mills at the same destination?")

Mr. Wooden: I should say instead of delivered prices quoted by various mills—I should say the cost delivered at particular destinations, delivered costs, in other words.

A. Well, I don't think there was any substantial difference at all in the prices being quoted. If there was we wouldn't have gotten the business. If we didn't meet the lowest price we wouldn't get the business.

By Mr. Wooden:

Q. Was that the period when all prices were based on Lehigh Valley, anyway?

A. Yes, practically so.

Q. And the freight—was the freight then the
24462 same from all mills into Lehigh Valley?

A. Generally speaking, that is true. There were some little exceptions to a few nearby points, but the rates were blanketed as to the point of origin and the point of destination, generally speaking.

Q. Even in those very early days?

A. Yes, sir. And, too, there were not very many mills in the Lehigh Valley in those early days.

Q. Will you state, Mr. Coogan, just how the Alpha Company's base prices are made up, what factors are taken into account?

A. Well, I think I testified on my direct testimony that in theory we set a price that we think will return us a fair profit, but as a matter of fact for many years our prices—we have not been able to fix the prices at our mills on that basis. We had to take into consideration the commercial and competitive conditions existing in the different districts and from nearby districts.

Q. Isn't what you mean there chiefly that the volume isn't adequate to enable you to come out with a profit at the unit price that you have set?

A. Well, certainly, we have not made any profit or measurable profit—we have made a little profit in a few years, but we have lost money since 1931.

24464 Q. Well, isn't that chiefly because of lack of volume?

A. Either that or smallness of price.

Q. Well, that is what I am trying to get at.

A. Well, if you had sufficient price with the lesser volume, you could still show a profit.

Q. If you had a large enough margin you could show a profit on a thousand barrels a year.

A. Sure.

Q. That is just theoretical, of course, but it is impossible at the same time.

A. Sure.

Q. But what I want to get at is, when you fix your base price and in advance of knowing what the volume is going to be or even what your costs are going to be in the future, how do you go about it? What elements do you include? What items do you include in that?

A. Well, Mr. Wooden, it isn't a difficult problem to estimate what the demand is going to be.

Q. Yes.

A. And it is not a difficult thing to project your probable cost based on your past experience.

Q. Do I understand that you take your past record of experience of costs and then add what you think is a sufficient margin per barrel to enable you to come out
24464 with a profit on the whole business?

A. Well, I told you that we had not been able to set our prices in that manner. The competitive and commercial conditions made that impossible.

Trial Examiner Norwood: I know, but he wants to find out if you figure your first costs that way before
24465 you adjust it to competition.

The Witness: Well, that is the way it would be perfectly natural, for us to figure it that way based on our past experience and projected costs.

By Mr. Wooden:

Q. And you figure your costs on a per-barrel basis in that connection?

A. Yes, everything is figured on a barrel basis.

Q. How much do you add for profit per barrel after you get your costs all figured out?

A. That would be arrived at in our company by
24466 consultation among the executives. My own personal view is that we should have a profit based on present shipments of approximately 30 cents a barrel.

By Mr. Wooden:

Q. And is that reflected in your base price at present?

A. I told you we hadn't been able to make our base prices on that basis.

Q. Yes, I know, but is that what you are endeavoring to do in figuring the base price?

A. I said that is what we would do if there were not other factors involved.

24470 Q. Referring to this Ohio price situation of 1931, I believe you said that you put in a base price of 96 cents because that appeared to be the lowest price that competitors were getting in that area; is that right? Getting in some points in that area.

A. I said according to the best information that we

could get from the field, we found some prices in that field which seemed to be made up on about that basis.

Q. They were cutting Alpha's base price in so doing, were they not?

A. They were quoting lower prices at the destina-
24471 tions than we were quoting.

Q. And if you competed there that meant that you had to take less than your base in mill net, didn't it?

A. Yes, if we wanted to meet the lowest price at that destination.

Q. As a matter of fact, wasn't Alpha itself taking as low as 96 cents, or even lower, at some destinations where Alpha base didn't govern?

A. Probably so, yes.

Q. But in doing that you weren't cutting anybody's base price, were you, when you took it?

A. I was meeting the lowest price at the destination affected.

Q. Yes. And you weren't cutting anybody's base price?

A. I said I was meeting the lowest price at the destination.

Q. Can't you answer my question as to whether or not in taking 98 cents or lower elsewhere—

Mr. Leisure: Now, if Your Honor please—

Q. —whether you were cutting anybody's base price?

24472 A. I think my answer answers it. I was meeting the lowest price that I found at that destination.

Trial Examiner Norwood: Well, in making the lowest price to that destination, was it cutting anybody's base price? Was that the effect of it?

Mr. Leisure: If Your Honor please—

24473 The Witness: Well—

Mr. Leisure: I would like to have some explanation of what that question means, that Counsel has put, as to whether it was cutting someone else's base price. I would like to know, first, what the ground has been which is laid for having this witness testify as to what other companies were doing. Second, I would like to know what the question means. Otherwise, I object.

Trial Examiner Norwood: Will you answer my question now?

The Witness: What was the Judge's question?

Trial Examiner Norwood: Read my question.

(Question read as follows:

"Well, in making the lowest price to that destination, was it cutting anybody's base price? Was that the effect of it?")

The Witness: In making the prices at that destination, we used the same base figures that we were using in that territory. So far as I know, that meant the lowest price there.

By Mr. Wooden:

Q. In other words, it was your practice to maintain the base price that you found in territory where your own base price did not control?

24474 A. I didn't try to maintain anything. I met, in every case that I could, the lowest price at the destination involved.

Q. But haven't you testified to using base prices of other mills in figuring out your delivered prices at particular destinations?

A. Yes, sir; and we do.

Q. Wasn't that your practice here in 1931 when this situation in Ohio arose?

A. You asked me the question about maintaining base figures.

Q. Well, perhaps I should not have used that word; but you adopted them, or—

A. I used them in arriving at our destination prices.

Q. And it was your practice and policy not to

24475 quote below the delivered prices composed of those base prices plus freight?

24476 A. It was our policy not to quote below the lowest price we found at any destination.

Q. Is your answer to my previous question "yes" or "no"?

A. I will have to ask your previous question.

Mr. Wooden: Read the previous question.

(Question re-read by Reporter.)

A. That is true, if we found that was the lowest price at that destination.

Q. When you testified that you found some competitors making as low a price as 96 cents at some places in Ohio, you were referring to their mill net that they were getting in those instances, were you not?

A. Yes, we figured it back to a mill net.

Q. Wasn't your purpose in reducing your base price to 96 cents in Ohio in 1931, and putting in a base at Fultonham and Osborne, to restore a stable base price?

Mr. Porter: Your Honor, I object to the question. It misquotes his testimony. He puts in there "and putting in a base." The witness has testified he never put in a base and I object to the question as misquoting the answer of the witness.

Mr. Wooden: I never said anything about his
24477 testimony.

Mr. Potter: No.

Mr. Wooden: I just asked him what his purpose was.

Trial Examiner Norwood: Read the question.

(Last question read by Reporter.)

Mr. Leisure: There is nothing in the record that he did put in a base price.

Mr. Porter: The witness has specifically denied that he put in a base at those places.

Mr. Wooden: Then I misunderstood the witness. Let the witness correct me if I am wrong.

Trial Examiner Norwood: Let him testify if that is a fact.

By Mr. Wooden:

Q. What about it?

A. I don't know what I said in my testimony, but what we did at that time in Ohio has got to be coupled up with what happened before in that market. I don't think you can answer one question without going back into the history of the case and show what happened before.

Q. Well, did you put in a base price of 96 cents at your Ironton mill at that time?

A. Yes, sir; we did.

Q. Did you put in a 96-cent base price at Osborn and Fultonham at that time?

24478 A. We quoted delivered prices, meeting the competition which we found in the field, and which we based on the base figure of 96 cents at that mill, because that was the price which, according to our best information, those mills were quoting in that field.

Q. Now, I am asking you whether or not your purpose in doing that was not to restore a stable base price?

A. Our purpose was to try to get a little more money for our cement, and I have stated that you must take into

consideration what the Alpha Company had done in that market previously to the time we put in the 96-cent base.

Q. But the 96 cents was taking less than you had been getting, wasn't it?

A. No, sir; it was not.

Q. Less than your base?

A. We had no base previous to that; we had a state-wide price.

Q. But it was higher than 96 cents, was it not?

A. It was not.

Q. Didn't you have a higher base at Ironton than 96 cents, prior to that time?

A. Well, what do you mean prior to,—when?

Q. Well, prior to May, 1931?

A. No, sir; we did not. We didn't have any base at Ironton prior to May, 1931.

24479 Q. I do not mean immediately prior, but didn't you have an Ironton base higher than 96 cents in 1930?

A. Well, I would have to have the figures before me. If you go back far enough we had a base higher than 96.

Q. As a matter of fact, didn't you put in the 96-cent base only in May, 1931?

A. Yes, that's my testimony, we put it in May, 1931.

Q. I am still not clear that I have got an answer to my question as to your purpose, whether it was not, in putting in a 96-cent base, whether your purpose was not to restore a stable base price.

A. I told you that our purpose was to try to get a little more money for our cement.

Q. By taking less, then—by putting in a lower price?

A. We didn't put in a lower price.

Q. Then I am all twisted.

A. Well, you are.

Q. I thought your testimony was that you put in this 96-cent price in order to meet the lowest prices that some of the competitors were making, and which constituted a cut in your base price.

A. Well, I should like to look at my testimony. My memory is right before we put in a 96-cent base we had a flat price all over the State of Ohio.

Q. What was it?

24480 A. Of $1.50 per barrel.

Q. And how long had that been in effect?

A. That would have been in effect for probably five months.

Q. Well, you got a lot more than 96 cents net at the mill, at that $1.50 price for some shipments, didn't you?

A. I doubt that very much. As I remember it, that $1.50 price was in cotton.

Q. What is the 96-cent price, then?

A. Ninety-six cents was stripped at our mill.

Q. In other words, $1.36 in cotton; is that right?

A. $1.46 in cotton.

Q. $1.46?

A. At the mill. Now, then, you have got to add some freight charges.

Trial Examiner Norwood: That $1.50 was not a flat delivered price?

The Witness: It was a flat delivered price to any place in the State of Ohio.

Trial Examiner Norwood: In cotton?

The Witness: I think it was in cotton, but I am not quite sure of that, but whether it was in cotton or paper it was lower than the 96 cents after deducting the freight.

Trial Examiner Norwood: Would it be where your freight was only 10 cents a barrel?

24481 The Witness: Probably not to such a point, but generally speaking, it would. I don't think there are any markets where we have 10 cents a barrel, except at Ironton, Ohio, proper; the minimum is about 23 cents.

Trial Examiner Norwood: Well, then, the minimum would be lower than 96 cents?

The Witness: As low or lower.

By Mr. Wooden:

Q. Showing you Commission's Exhibit 971-30-G, which is your letter to Arthur Burns, June 4, 1935, describing this 1931 situation, wasn't the flat arbitrary price for the entire State $1.65?

A. When?

Q. Beginning in January, 1931.

A. My testimony showed that when we first put in a flat delivered price it was $1.75, and it was reduced in successive reductions until it got down as low as $1.50 per barrel.

Q. I see, $1.50 was the last?

A. Yes, sir.

Q. What did you mean by your statement in this letter that when you reduced the price to $1.45 in cloth on April 1, 1931, eliminated the dealer service payment of 5 cents a barrel, the price was further reduced to $1.40 per barrel,—what did you mean by the statement immediately following that, that this did not help the competitive situation?

24482 A. I mean it did not get us any larger portion of the business emanating from that particular territory.

Q. You would not agree that you were trying to help the competitive situation by teaching these price cutters a lesson?

A. No, I told you that we were trying to meet what prices we found them quoting in that field.

Q. And you will not agree that you were trying to teach the price cutters a lesson?

A. I will not.

Q. And you say the same as regards putting a base in at that mill, the mills at Fultonham and Osborne?

Mr. Porter: That question is objected to, Your Honor, because he said he did not put in a base four times this morning, and I object to the question.

Trial Examiner Norwood: Read the question.

(Last question read by Reporter.)

Trial Examiner Norwood: I think he has said he put in a base of 96 cents, did he not?

Mr. Porter: At Ironton, but he didn't put in a base at these other mills, and Mr. Wooden is trying to—going back to the White Book, and referring to that, and putting that statement in Mr. Coogan's mouth, and Mr. Coogan has denied it a half dozen times.

Trial Examiner Norwood: I think you will have to ask him the factual question first.

24483 Mr. Wooden: I am willing to have the witness state the facts on that issue.

Mr. Porter: Ask him an honest question,—did you put in a base at Fultonham and Osborn.

Mr. Wooden: All right.

A. We gave full force and publicity to the prices which we found our competitors quoting in that field, and according to our best information that we could get, and from prices which we picked up, they were quoting on the basis of about 96 cents at their mill, and that's the figure that we used.

By Mr. Wooden:

Q. Did you put in a base at their mills, at Fultonham and Osborn, of 96 cents?

A. I met their competition. I don't know whether you would call it putting in a base or not. We gave full force and publicity to the prices they quoted, and I am willing to say that we used that base figure on all of the business that we quoted on in that field.

Q. To satisfy Mr. Porter—

Trial Examiner Norwood (Interposing): For how long? How long did you do that?

The Witness: Until, I think, December, but I am not sure of the month.

By Mr. Wooden:

Q. (Indicating.) To satisfy Mr. Porter, and Mr.
24484 Coogan, both, is this your signature to Commission's Exhibit 971-30-H?

A. Yes, sir.

Q. Didn't you say in that letter that you established a base at Osborn and Fultonham?

A. Yes, the letter states that.

Q. Well, that is what I was trying to ask you, but I couldn't get anywhere with it.

Q. Well, didn't the installation of a base of 96 cents at Fultonham and Osborn create a very serious situation for the mills located there?

Mr. Porter: I object, Your Honor. How in the world can this witness know what the situation was for some other mill? He knows his own company.

Trial Examiner Norwood: He can say whether he knows or not.

Mr. Porter: Well, he can say he doesn't know, of course.

24485 Trial Examiner Norwood: Of course, of course, and say he does know if he does.

Mr. Porter: It is obvious he cannot—

Mr. MacIntyre (Interposing): And if the witness is told time after time by Counsel for the Respondents that he does not know, it is likely that that is what his answer will be.

Mr. Porter: I hope so.

Trial Examiner Norwood: The objection is overruled.

Read the question.

(Last question read by Reporter.)

Mr. Leisure: Now, if Your Honor please, I object—

Trial Examiner Norwood: Answer the question. I have ruled on that.

This is cross-examination; he has a right to state that.

The Witness: May I have that question, please?

Trial Examiner Norwood: Read it.

(Last question re-read by Reporter.)

A. I don't see how it could create a serious situation, when we found them quoting prices based on that figure in the field.

By Mr, Wooden:

Q. But they were not quoting that everywhere, were they, it was just at some points that they were taking that little?

A. I don't know at how many points they were quoting.

24186 Q. Well, don't you know, as a matter of general experience in the industry, that the mills there could not get along on a maximum mill net of 96 cents?

A. I wouldn't know that.

Q. And your putting in a base at Osborn and Fultonham had the effect of making 96 cents the maximum that they could get anywhere, did it not?

A. Yes, so long as we use that base figure, yes.

Q. Yes.

A. But it was as high as what we put in at our own mill at Ironton.

Trial Examiner Norwood: When you were selling down there on that base price, was your mill net on that business the same as your mill net that you were receiving in other territories?

The Witness: I don't quite understand your question, Judge.

We received that mill base at our mill; in other places where we met other competition we might take less.

Trial Examiner Norwood: You wouldn't have the same mill net on that business that you would in selling at some other place in another territory?

Mr. Porter: You mean from the same mill.

Trial Examiner Norwood: Yes.

The Witness: No, the nets differed.

24487 By Mr. Wooden:

Q. So, you didn't reduce your base price at your other mills on that occasion when you reduced it there at Ironton, did you, and put in a 96-cent base at Fultonham and Osborn?

A. I wouldn't want to answer that question unless I saw the list of base prices; I don't think we did.

Q. Did you receive any complaints from the mills at Osborn and Fultonham about your putting in a base there of 96 cents?

A. I never talked to the people with mills at Fultonham or Osborn.

Q. Did any officials of your company ever receive any complaint from them?

A. Not in so far as I know. I heard gossips of complaints in the field from our customers, and from our salesmen.

Q. Referring again to Commission's Exhibit 971-30-G, your reference to the company making the complaint is, of course, entirely correct in the statement that this reduction reduced the net accrued to the mills shipping into that territory.

Did you ever hear that they had complained?

A. I told you how I had heard they complained; and that's the first information that I ever had that I remember where there was anything said, and they don't say who made the complaints.

Q. When was it that you discontinued your bases at Fultonham and Osborn?

24488 A. I think it was in December of that year; I am not sure whether it was in 1931 or 1932; it might have been early 1932.

Q. Wasn't it December, 1932?

A. Yes, it was December, 1932.

Q. When you discontinued in December, 1932, then what was your Ironton base?

A. I don't remember. I think that we raised our Ironton base, but I am not sure of that.

Q. What conditions of supply and demand in December of 1932, the depth of the depresion, could give support to an increase in your base price there at Ironton?

A. We didn't need anything in supply and demand; all we needed to do was to look at our financial statements.

Q. Well, I guess there were a lot of people looking at financial statements at that time, and yet couldn't do anything about it.

A. I certainly think I would be a very poor business man if I did not try.

Q. You tried and succeeded?

A. We at least lessened our losses.

Q. What reason did you have to believe that the new and higher base would not be cut, just like the one before had been?

A. I had none.

Q. Since that time have you had any conditions in
24489 that territory that showed that your Ironton base price was being cut at some points?

A. Will you state the time?

Q. I said since then.

A. Yes, at some time since then we have had evidence that the price that we were quoting at destination was being—somebody else was quoting a lower price.

Q. Did you have any evidence that the mills at Osborn and Fultonham were cutting your base price in anything like the way they did in 1931?

A. Well, of course, I don't see where you say cut a base price. I figured on my prices at destination. Now, if they quote a lower price than our base figure, plus our freight rate, if that does make our lowest price there, I don't know what you mean by it.

Q. That is cutting your base price, isn't it?

A. No.

Q. I thought you agreed a while ago it did.

A. No, I don't think it cuts your base price. I don't know what you mean by cutting a base price.

Q. Making a delivered price which after taking out the freight from the basing point makes less than the base price at that basing point; is that clear?

A. In that particular case that would be quoting a lower base price than we were quoting.

24492 Q. I understand there was a time in the history of the Alpha Company when the delivered prices were entered on the company ledger; is that right?

A. That is correct; yes, sir.

Q. How long since has that been?

A. I think we discontinued that about 1920, as I remember it.

Q. How did you determine your average mill nets during that period when the delivered prices were entered on the ledger?

A. Well, by distribution of the invoice.

Q. Does the Alpha Company keep any record which shows the amount of freight paid by its respective customers for your account?

A. No, only in a general way. We keep no detailed account of the amount of freight allowed on our invoices.

Q. You have no way of telling at any given time what amount of freight a particular customer has paid the rail road for your account?

24493 A. Yes, we can ascertain that from our invoices.

Q. But you don't keep any record of it, a running record of it so that you would know what the state of the account is at any time? I mean, you could do it but you don't.

A. We know what the state of the account is, of course.

Q. I mean of the payments of freight for your account.

A. We keep no running account of the payments—the freight which is deducted from our invoices.

Q. You have never compiled the amounts that appear on the invoices to get the amount of freight that a particular customer pays over any given period of time?

A. No, not any given customer. Generally, we have gone over it, but so far as any particular customer, no.

24497 Q. Now, regarding this Ohio situation in 1931, where you established a base of Osborn and Fultonham, was the delivered price at Osborn and Fultonham prior to that time made up of Ironton base plus freight?

A. Yes, if we quoted in those markets that is the way we made up our price.

Q. What was the approximate freight from Ironton to Osborn?

Q. Well, can you approximate it?

A. Oh, I should say probably 40 cents a barrel.

Q. And prior to the time you reduced the price to 96 cents at Osborn, the price at Osborn was made up by adding that much freight to the Ironton base, wasn't it?

A. That is the way we made up our price.

Q. Wasn't that the way the Osborn mill was 24498 expected to make up its price?

Mr. McFadden: Your Honor, I think there is a

little confusion there. Mr. Coogan says prior to this morning he developed that we had had a flat price in Ironton for some time before the Osborn base was used, and I think Mr. Coogan had in mind prior to that, and I think we ought to get the record straight.

Mr. Wooden: I mean the Ironton base was prior to the time the flat price was put in. I think you are correct about that.

The Witness: I never expect my competitor to do anything. I only take what he does.

By Mr. Wooden:

Q. Don't you expect your competitors to meet your competition by making his delivered prices the same as yours?

A. Only from what prices I find him quoting in the fields.

Q. How do you expect—don't you expect your prices to be the same at your competitors' delivery points when you submit bids, sealed bids?

A. I expect them to be as low as the lowest.

Q. And you expect them to be as low as the lowest, too?

A. I don't know how they figure. I, of course, expect nothing of the other man's prices, and have nothing to do with them at all. It is up to him to make them, from experience, but I know what I find in the fields.

24499 Q. What is the capacity of your Ironton mill?

A. The capacity is approximately a million barrels a year.

Q. Wasn't the capacity of the Southwestern Mill at Osborn more than twice that?

A. Well, I don't know the capacity, but I wouldn't think it would be twice that. It was probably somewhat larger but not twice our capacity at Ironton.

Q. Wasn't it over 2,000,000 barrels?

A. I told you I wouldn't know the exact capacity.

Q. I thought you said the matter of capacity was a matter of common knowledge.

A. I didn't; I said it could easily be ascertained by anybody with common sense; I could go to Dayton tomorrow and ascertain it.

Q. Well, you do have the approximate knowledge of the approximate capacity of your various competitors?

A. The approximate capacity, yes.

Q. And you can't say whether or not the Osborn mill is 2,000,000 barrels as against your Ironton million barrels?

A. I don't carry all of those things in my mind, surely not.

Q. Wasn't the capacity of the Wabash mill,—that at Osborn,—wasn't that about the same as your Ironton mill capacity?

A. Well, from memory, I would say it was probably a little bit larger, but I wouldn't say how much.

Q. Can you fix the time when Alpha resigned 24500 from The Cement Institute?

A. It was in the early part of 1931.

Q. Was it about the time you put in your flat base throughout Ohio?

A. Oh, no, it was some time after that, as I remember it.

Q. Was it before you put in the base at Fultonham and Osborn?

A. Well, I think the fairest way to get at that is to—there is an exhibit here showing the date we resigned, and then there will be no uncertainty about it.

Q. Well, there is an exhibit showing that your letter of resignation was read at the Institute's meeting, trustees' meeting, I suppose, May 12, 1931. I was just wondering if that helped you to fix the time of your actual resignation.

A. Of course, if that is the date the letter was presented, that is the date of our resignation.

Q. Well, then, that was just a few days before you put in the Osborn and Fultonham bases; is that right?

A. I don't remember the exact date. I thought it was a little earlier than that in May that we put in the Fultonham and Osborn bases.

Q. Wasn't it May 18?

A. Well, I don't know. There is an exhibit in here showing the exact date.

Q. Did you ever put in a base price at another 24501 competing mill's mill location in order to control competitive conditions?

A. We never put in a base at anybody else's mill with the view in mind of controlling competitive conditions, because you simply couldn't control them. The mill there would move their bases up and down. You could assume

a little price leadership in it, but I don't think that you could—can count it as competitive conditions.

Q. Now, on direct examination you gave some testimony about the establishment of a base at your Bellview, Mich., plant, and nowhere among the reasons that you gave was any such element as that. Was that an element in your having a base at Bellview, in order to control competitive conditions?

A. Well, by having a base at our mill, we can move that price up or down, as we see fit.

24502 A. If you want to assume or control price leadership from your own mills, you have got to put in a base, and that was one of our ideas in using the mill at our Bellview plant at Michigan.

24504 Q. You know what competitive conditions are, don't you, Mr. Coogan?

A. I know what many of them are.

Q. And you know what your company put in a base for at Bellview, don't you?

A. And I told you why we put it in, so we could assume price leadership in the territory from around that mill.

Q. And that is in your mind assuming price leadership, the same as controlling competitive conditions?

A. Well, that certainly does not control competitive conditions, having a base, because anybody is free to come into that market and do as they please so far as quoting any prices is concerned.

Q. Then I take it that your answer is that you
24505 didn't put in a base at Bellview in order to control competitive conditions?

A. It may make it easier for use to meet competitive conditions.

Q. But it wasn't put in in order to control competitive conditions?

A. No, you can't—it wouldn't control it.

Q. Or even help control?

A. It might be one aid.

Q. Well, will you tell us in that connection what you meant by your letter which appears as Commission's Exhibit 971-18-M, when you wrote Dr. Burns in August, 1935, that you put in the Bellview base in part because it would help in a manner to control competitive conditions in the State of Michigan?

A. You will notice that I put a qualifying clause in there, and I say "help in a manner."

Q. Yes.

A. And I told you that it was one of the aids, but only one of the aids.

Q. Then I take it, when you put in a base at Osborn and Fultonham, that also was an aid in a manner controlling competitive conditions?

A. That was our method of trying to meet a competitive condition.

Q. Wasn't it the same situation that is referred to in this exhibit that I just showed you, helping to control them?

24506 A. Well, we couldn't control because the man with mills at that point could make his base lower any time he felt like it. The control was in his hands.

Q. But you made it so low that he couldn't very well make it any lower than you without taking a loss on his whole business?

A. No, we didn't put it in with that idea in mind at all. We put it in because we felt that that was about the price that they were using in arriving at their destination prices. If we would have put in any other, our prices would still have been higher than theirs.

Q. You assumed price leadership when you put in such a base, too, don't you, even though it is at the other mill's location, you assume price leadership there, don't you?

A. At the time you put it in, only.

Q. Yes, surely.

A. Yes, the next day the man with the mill there could take that price leadership away from you.

Q. What were the competitive conditions in Michigan that you mentioned in your letter as having put in a Bellview base in order to control?

A. Well, Mr. Wooden, I wouldn't want to attempt at this time to recite what the competitive conditions were, because I don't remember them.

Q. Was it anything like the Ohio situation in 1931?

A. No, sir; I don't think it was as bad as the 24507 Ohio situation in 1931.

Q. A difference in degree but not in kind, would you say?

A. Well, a difference.

Q. Was there some price cutting going on in Michigan at that time when you put in your base there?

A. There always has been in Michigan.

Q. Some unusual condition was there that led you to take that action at that particular time?

A. No, you must remember we only acquired those mills a few years earlier and we had to feel our way with that mill. It was not altogether a desirable mill, and we just felt our way with it and handled it as best we could.

24510 Q. In the early days when Alpha was quoting f.o.b. mills, did it have at the same time several mill prices depending on the territory in which it was shipping?

A. Not several, but more than one.

Q. Well, just two, then?

A. Usually just two, as I remember it.

Q. Two?

A. Yes.

Q. Referring to Respondents' Exhibit No. 425, page 9, the exhibit being a pamphlet by G. S. Brown of the Alpha Company, he states on page 9 that originally all prices were based on Lehigh Valley prices and while doubtless in the early days the price received by individual

24511 mills varied, the price to the consumer was the same. Is that in accordance with your recollection of the situation?

A. At what time did you want that answer, please?

Q. Well, at the time he was speaking of, and I don't know that I can fix it any better than you can. He says in those early days.

A. Well, your competitive conditions in the early days were somewhat different from what they are today, and while I think Mr. Brown's statement is generally correct, I have stated in my direct testimony that there was, in those days, a certain amount of brand preference, and that continued for a few years.

Q. Well, where Mr. Brown says that the price received by the individual mills varied the price to the consumer was the same, wouldn't you interpret his language as the price received by the individual mills to mean the mill net, received by them?

A. I would say he had in mind there the mill net, from reading it.

Q. Yes.

Now, you have told us about making—the desirability or necessity of making dealers competitive by having all of them on an equal basis so far as the delivered cost of their cement is concerned. Do you think it would make them more or less competitive if the delivered costs to the dealers from different mills were not the same?

24512 A. Why, they would all buy their supplies from the mill quoting the lowest price.

24515 The Witness: Well, if other mills met that price, they would buy some from the other mills.

By Mr. Wooden:

Q. Or if they went low wouldn't that possibly lead into a situation such as you characterized as a price war?

A. I don't know what it might do. I imagine that while that man had the lowest price they would buy from the man with the lowest price.

Q. And would you consider that competitive?

Mr. Porter: Now you are talking about manufacturers or dealers?

By Mr. Wooden:

Q. I asked you if you considered it competitive for them to buy it from the manufacturer that makes him the lowest delivered price.

A. Well, there again I would have to ask, of course, whether you mean the dealers or the manufacturers.

Q. My question was about the dealers buying from the manufacturer. Put it both ways in your answer, if you like, as to being competitive among the dealers or

24516 competitive among the manufacturers.

A. Well, of course, I think in either case if is competitive among the manufacturers, if they all meet the lowest price. I think they are competitive. If some of them—if somebody goes out and quotes a lower price, I still think it is competition.

Q. You testified about one time making a price to certain waterfront yards in Brooklyn different than were made to other Brooklyn yards. Did I understand that you later put them all on the same basis?

A. Mr. Wooden, I never testified to any such thing.

Q. Well, then, I misunderstood and made a wrong note.

A. Yes, you did.

Q. Hasn't there been a time in recent years when the

Brooklyn yards got a lower price if they were on the water front than other yards?

A. Now, I explained that quite fully in my direct testimony by saying that some of the yards in Brooklyn were located on the water front where there is a certain freight rate applying. Other yards are located in the interior of Brooklyn on some of the small railroads and where the freight rate from our mill is higher, and I said that we quoted the same price to all the dealers in that market.

Q. In other words, you believed that the water front yards ought not to have any advantage from their better location in lower cost of transportation?

24517 Mr. Leisure: I object to that "in other words."

The witness has told us the facts. Mr. Wooden can draw his own conclusions. There is no "in other words" about it. He has told us what the facts are. Mr. Wooden can draw the conclusions if he thinks that is what they are.

Mr. MacIntyre: If Your Honor please, he has told us what he did and now the question is why he did it.

Trial Examiner Norwood: Yes, I think so.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Objection overruled.

The Witness: May I have the question, please?

Mr. Porter: I think the question ought to be put, "Why did you do that?" instead of putting it the other way.

Trial Examiner Norwood: That may be. Let's have the question read.

(Question read.)

Trial Examiner Norwood: Is that a fact?

The Witness: The dealers located at the water front and in the interior were serving the same market and they had to be on a competitive basis. Unfortunately for us, due to competition, we were forced to make our prices over the whole territory based on the freight existing to the water front yards, which was the lower rate.

By Mr. Wooden:

24518 Q. Well, it is your view, then, I take it, that the dealers that compete with each other ought to be sold at the same delivered cost regardless of the actual differences in those costs?

A. That is the attitude of our company; yes, sir.

Q. And that, I take it, is what underlies your policy in

the various cities where you used the minimum line haul instead of varying switching rates?

A. Yes, sir.

Q. Now, with regard to this five-day notice of changes in price, did I understand you to say that there was a time when some companies used a different period than five days before their advance became effective?

A. Yes, I think there have been some times when—where one company would quote a price, make it effective five days later, that some other companies if they followed that price have made their effective date at the same time.

Q. Did Lone Star one time use a 10-day period before their advances became effective?

A. No, I don't remember that they ever used a ten-day clause. I didn't know about it.

Q. Did any company use a longer period than five days?

A. Not to my knowledge.

Q. Did any company use a period other than five days, longer or shorter?

24519 A. Well, Mr. Wooden, I just explained.

Q. You said there wasn't any more than that, but now I am covering the other angle of it.

A. I told you it was a little less, didn't I?

Q. I didn't get it. I am sorry.

A. Well, I—do you want it over?

Q. Can you name any such company?

A. No, I cannot. I might say that the Alpha Company might have done that at times. I know now and for some time past regardless of what our competitors do we give no less than five days.

Q. Would there be some advantage to the buyer in choosing between sellers one of whom made his advance effective within five days and another advance effective within a longer time?

A. Mr. Wooden, I would have to say no to that, because whenever there is an advance in price with the five-day notice you can rest assured that every one of your customers has plenty of time to load himself up with all the cement that he will require for many weeks in the future, and in addition to that he covers himself on specified jobs and the manufacturer gets very little or no benefit from any advance in price, sometimes for months after he actually advances his price.

Q. Wouldn't it be more of an advantage to the customer if he had ten days in which to advance his order at the old price?

A. Are you assuming that the competitors would
24520 allow that to stand?

Q. Well, I am assuming that if someone did make it ten days and the others were making it five, wouldn't that be an advantage to the customer?

A. For about one day, or a little less than a day; until these competitors find out and meet it.

Q. Do you recall the Trade Relations Committee, of which you were a member, at one time going on record in opposition to giving any advance notice of price increases?

Mr. Porter: Well, will you please fix a time?

Q. Along about 1919.

Mr. Porter: This was before the Code period, you know.

Mr. Wooden: Oh. Yes.

A. Yes, I think it was considered to be the best practice in the industry, not to give any notice of price advances, but whether it was written in quotations or not, from the time that I have been in the industry, you can trust your dealers and customers; they protected themselves whether you had the five-day notice in or whether you didn't.

By Mr. Wooden:

Q. What was the grounds on which the Trade Relations Committee held it to be an unbusiness-like practice or opposed it anyway, from giving any advance notice?

A. Well, I don't know. I don't remember on
24521 what grounds they did it, but I will say, as a general principle of business, I don't think it is a good business policy to give notice of any advance in price.

Q. You don't agree, then, with the industry's practice, then, in that regard, of giving five days' notice of advance?

A. I explained to you that we refrained from doing it for some time, and our customers and our field men said it was putting them to a disadvantage, and therefore we instituted and followed the five-day notice.

Q. Did you do that under the N.R.A. Code, or when?

A. No, we did it before the N.R.A. Code. We did it in 1932, some time in 1932.

Q. Had the five-day notice of advance been pretty well established by the time the N.R.A. Code went into effect?

A. Well, I don't know to what extent it was being used by my competitors; I know that we used it from 1932.

Q. But, I understood you to say you used it because your salesmen reported it was necessary to meet competition.

A. Yes, that was particularly one company that had been using it for years before that; that was the Lone Star Company.

Q. Do I understand there wasn't any particular uniformity about the practice of the various companies prior to 1932 or thereabouts?

A. I am telling you that so far as that particular provision is concerned, it was used originally by one company.

24522 Q. What company?

A. The Lone Star Company, and gradually other companies came to use it.

Q. That was what was sometimes referred to during the N. R. A. Code period as a five-day "waiting period," wasn't it?

A. Well, there was a provision in the Code which provided for a waiting time. That speaks for itself, I think.

Q. Are you familiar with that expression, "waiting period"?

A. Well, I have always heard it referred to as "lag period."

Q. Well, all right.

When did the five-day retroactive decline go into effect?

A. I think that that was provided for in the first Code that was approved, I think.

Q. The N.R.A. Code?

A. The N.R.A. Code.

Q. Prior to that time what had been the situation so far as, you might say, retroactive declines or guarantees against declines, was concerned?

A. Well, as far as our own company was concerned we handled each case on its merits.

You didn't have any uniform practice of your own?

A. Not entirely uniform. We had many cases where customers declined to accept shipments in transit. We

were selling on a delivered price and we had to
24523 make the adjustment and in some cases it might be left and in some cases it might be more than five-day shipments.

Q. Was there any uniformity in the practice of your competitors with regard to five-day retroactive declines?

A. The only thing that I can tell you is, that my reports in the field always indicate that our competitors were doing more than we were.

Q. Did your reports indicate whether your competitors were all using a five-day period, or a uniform period?

A. No, they didn't indicate that there was any uniformity.

Q. Did some give a longer period than five days' guarantee?

A. Well, I tell you, and I can only tell you the reports from the field, and the reports from the field seemed to indicate that our competitors were doing at least as much, if not more, than we were, and there were, as I told you, no uniformity in our company. We handled each case as we thought it deserved.

Q. Well, what I am getting at, is whether or not the N.R.A. Code,—was that the first time that the practice was standardized, so to speak, on a five-day basis?

A. I think that that is according to my recollection; that is the first time that it was ever stated in the number of days.

In actual practice it had been in in one form or another for many years.

24526 Q. Mr. Coogan, referring to Respondents' Exhibits 455-A and B, being the list of basing points and dates when Alpha encountered them, the earliest dates that Alpha encountered them, would you tell us which of those basing points listed there are no longer basing points?

Mr. Porter: You mean basing points used by the Alpha Company?

Mr. Wooden: Yes.

By Mr. Wooden:

Q. Well, if you wish to tell us which ones are still used by the Alpha Company, that might be a shorter way of getting at the same time.

A. I can go over this list and recite the names of the places that we are still using, according to my best memory.

24527 By Mr. Wooden:

Q. All right, understanding that the ones you don't recite you no longer use?

A. Yes.

Q. All right.

A. Lehigh Valley, Mitchell, Ind.

Q. Can you give the price at any of those points as you go along?

A. No. Lehigh Valley I could.

Q. All right.

Trial Examiner Norwood: That is the present price?

By Mr. Wooden:

Q. At each one you can, yes.

A. At Lehigh Valley the present price is $1.45 stripped. Universal, Pa.; I think at the present time we are using a base figure there stripped of $1.55. Richard City, Tenn.; Alsen, N. Y., where we at the present time are using a stripped base of $1.65; Hudson, N. Y., the same figure. Fordwick, Va.; I don't remember. Union Bridge, Md.; Buffington, Ind., $1.60 stripped. LaSalle, Ill., $1.70 stripped. Mason City, Iowa; Hannibal, Mo., $1.60 stripped.

Q. At all those points or just Hannibal?

A. No, at Hannibal, Mo.

Steelton, Minn.; Iola, Kansas; Leeds, Ala., $1.60 stripped. Birmingham, Ala., which means Boyles,
24528 North Birmingham, Phoenixville, $1.60 stripped. Alpha, Mo., $1.60 stripped; Sugar Creek, Mo., $1.60 stripped. Prospect Hill, $1.60 stripped. Silica, Ohio; Ironton, Ohio, $1.50 stripped. Limedale, Ind.; Bonner Springs, Kansas; Independence, Kansas; Norfolk, Va.; Tampa, Fla.; Buffalo, N. Y.; Spokari, Ala.; Cleveland, Ohio; York, Pa.; Cape Girardeaux, Mo.; Manitowoc, Wis.; Clinchfield, Ga.; Evansville, Pa. Swedeland, Pa.; Toledo, Ohio; Milwaukee, Wis.; Kosmosdale, Ky.; Speeds, Inc.; Chanute, Kansas; Humboldt, Kansas; Rockland, Maine.

Now, according to my recollection, that about comprises this list and leaves out those that we have dropped. Of course, we have withdrawn from certain fields which we no longer attempt to serve.

Q. I notice in this Exhibit 455 that New York City, Boston, Baltimore, and Washington were once included. Were they included just because they were arbitraries?

A. Yes. Because in quoting our prices to those nearby points we had to consider the competition which would be brought on us by the Washington dealers, for example, and those prices were feathered out based on the cost of getting it from Washington.

Q. For the purpose of this list, this exhibit, places that carried arbitrary prices were included as basing points?

A. No, no, not those that carried arbitrary prices? Why, no. If you included all of the prices that carried arbitrary prices the list would be a hundred times
24529 that long.

Q. Well, didn't New York, Boston, Baltimore, and Washington carry arbitrary prices?

A. They carried arbitrary bases because the surrounding country was based on the price existing at Washington, for example, plus the cost of getting it from Washington out to the market place.

Q. In some instances by truck?

A. Why, in all of that arbitrary territory that is the way it was probably—it was arrived at in that manner.

Q. Feathered out in that way?

A. Yes, sir.

Trial Examiner Norwood: Just to keep the record straight, in some of those locations there you named a price, a present base price. Did you mean that base price to be confined to the location that immediately precedes it or to the several in front of it?

The Witness: No, to the location that immediately precedes it. I didn't attempt to give it from all of the points.

Trial Examiner Norwood: For the one place. I see.

By Mr. Wooden:

Q. And the list includes some points where there was no mill such as Wilmington and Charleston and Brunswick, Ga., and Savannah; that is correct, is it?

24530 A. That is correct; yes, sir.

24532 Q. I notice in this Exhibit 455, Mr. Coogan, main ports were taken as a basis in April, 1922. What were the circumstances regarding that?

A. In those days we used to ship our cement by water to Portland, Bangor, Stockland Springs, and some other places, and shipped it inland from the ports, and we made up our prices at the figures on the main ports plus the freight rates.

Q. How long did that continue?

A. I couldn't tell you exactly, it was probably only a very few years after that.

Q. Had it been discontinued by 1930, would you say?

A. Oh, yes, long before that.

Q. I notice from this Exhibit 455 that the first base after the Lehigh Valley was Mitchell and Stroh, Ind., in 1912; does that mean that between 1903 and 1912 the Lehigh Valley was the only base that Alpha used?

A. That is correct, so far as the Alpha Company is concerned.

24537 Q. Referring you to Respondents' Exhibit No. 457, what use do you make of such compilations?

A. These are the base figures that we use plus the freight rates in making up our prices at destinations.

Q. Worked out from conditions picked up in the field?

A. It is worked out from that, yes, and from the information that we get from our customers and from our field men.

Q. And from any other sources?

A. No, sir.

24543 Q. Do you have any storage warehouses or silos at any distributing point or consuming point supplied by any of your mills that use water transportation?

A. No, we do not.

Q. Do you use water transportation from your St. Louis mill?

A. No, sir; we do not. I explained in my direct testimony that we used it in one case. Our mill at St. Louis is not located on the water.

Q. How about your Ironton mill?

A. Our mill at Ironton is not located on the water, and while we have moved one or two shipments from there by water, it is not usual.

Q. How about the Hudson or the Alsen plant?

A. We are located on the water at Alsen, but I explained that in my direct testimony, that we had no demand for shipments by water except that portion of our business which is handled on a combination shipment by water and rail from Long Island City.

Q. You do ship by water to Long Island City?

A. And re-ship from there by rail.

Q. Yes. But you don't have any storage at Long Island City?

24544 A. Not handled directly from the boat to cars at Long Island.

Q. How long since your Alsen mill has made substantial shipments by water?

A. Well, it has been a good many years since we made substantial shipments by water, except, now, I am eliminating the Long Island business out of that.

Q. You are still making substantial shipments by water to Long Island City?

A. Yes, I would consider them substantial.

Q. How large are they?

A. Oh, well, I wouldn't—it would be a guess. If you want it, I will give it to you.

Q. What is your best opinion?

A. Probably 20 percent of our shipments out of our mill.

Q. Hasn't there been a time when more than half of the shipments from your Alsen mill went by water?

A. Yes, sir.

Q. How lately did that exist?

A. Well, not for a great many years.

Q. What do you mean by a great many?

A. Well, I will certainly put it more than ten years.

Q. You wouldn't think that they shipped more than half of their production by water as late as 1928?

A. Eliminating the Long Island business?

24545 Q. I didn't intend to eliminate anything. As to just what they shipped by water and what proportions.

A. Well, of course, a shipment in which a joint haul is involved is to my mind not a shipment by water.

Q. In other words, you want to eliminate the shipments to Long Island City as shipments by water from your Alsen mill?

A. Yes, they are not shipments by water. Water is only a part of the transportation involved in those shipments.

Q. Well, but they are physically transported by water to Long Island City.

A. And physically transported from there by rail.

Q. Yes.

What is the rail freight from Alsen to New York City?

A. Forty-two cents a barrel.

Q. And what is it from Lehigh Valley to New York City?

A. Forty-two cents a barrel.

Q. Has there ever been a time when the Lehigh Valley and the Hudson Valley bases jointly controlled the delivered price; that is, I mean to say, it didn't make any difference which one you figured at, you got the same delivered price in New York City?

A. I think that might have been true a few years ago.

Q. Was that true at a time when the base prices of the Lehigh and Hudson Valleys were different or the same?

24546 A. No, it happened when the base price in the Hudson River, as I remember it, was 10 cents a barrel higher.

Q. Was the freight then 10 cents lower?

A. The water freight at that time was about eight to ten cents lower.

Q. Didn't you put in the base at Alsen partly because of the advantage of water transportation?

A. No. When we put in the base at Alsen I have explained that we were under a contract for the sale of our cement in New York City which precluded us from selling there.

Q. Well, didn't you testify on page 23116 that one element in your decision to take over the mill there was because it perhaps had the advantage of water transportation?

A. Yes, if you repeat it that way, that is correct, but you will notice I qualified it and I said "perhaps," and I also said that was only one of the reasons.

Q. Yes. How long has it been since the New York dealers have been unwilling to take lots of two or three thousand barrels delivered by water?

A. More than ten years.

Q. Haven't the large dealers in New York since or less than ten years been buying steamer loads of foreign cement?

A. They have not. No dealer in New York, to my knowledge, has ever bought a steamer load of foreign cement. Foreign cement is brought into New York, put in storage, and sold out in small lots.

24547 Q. Did you hear or read the testimony of J. J. Ryan, a New York dealer, about buying cement in boat-loads?

A. He didn't say what kind of boats.

Q. Did you read his testimony?

A. As I remember it, I did. Now, Ryan bought cement in boat load lots but there were lighters put alongside of the steamer and then taken to his place, so that isn't a boatload of cement.

Q. Well, don't you remember his testimony, that he bought as much as 85,000 bags per steamer?

A. I don't remember his testimony. He might have, but certainly he didn't—he didn't put it in his warehouse.

Q. Of course, I suppose you will agree that steamers from across the ocean don't come laden wholly with cement.

A. Not always. Sometimes they do and sometimes they don't.

Q. Has there been any change in the practice of the New York dealers in that respect within a period within the last six or eight years as to buying cement delivered by water?

A. Oh, yes, a decided change. The railroads have brought it about by making such prompt deliveries of one and two carlots from the Lehigh Valley which itself very fully stopped the Hudson River mills from shipping down to New York in boatload lots.

Q. Now, you testified that the combination cost
24548 of water shipment to Long Island City and rail from there to destination, customers' destination, was just about the same as the cost of water transportation.

A. No, cost of rail transportation.

24554 Q. Well, is the water rate to Blissville about the same as the rail rate to Blissville?

A. It is lower, but there is no market place at Blissville.

Q. How much lower is the water rate to Blissville?

A. Well, will you specify the size of your cargo? That is a very important item in water rates, you know.

By Mr. Wobden:

Q. You specify it.

A. Well, in the quantities which your customer wants, the water rate to Long Island City is just as high as the rail rate.

Q. How about Blissville?

A. Long Island City, I said.

Q. How about Blissville?

A. Blissville would be the same as your customer wants, but there is no differences at Blissville destinations.

24555 Q. Do you mean to say now that the water rate to Blissville is not lower than the rail rate to Blissville?

A. It is lower, if you take a cargo of 3,000 barrels, but no customer wants 3,000 barrels.

Q. Do you send any shipments of that size to Blissville or to Long Island City?

A. We send to Blissville for reshipment by rail in carload lots out of Blissville.

Q. You then do get the advantage of that water rate in shipping in that quantity?

A. You do not, because as I have explained before, the combination of the water and the rail rate is at least equal to the through rail rate. There is no advantage.

24556 Washington, D. C.,
October 11, 1939.

24562 (COM. EXS. 1392, 1394-A to 1394-L, inclusive, and 1399-A to 1399-I," inclusive, were offered and received in evidence.)

24563 F. M. COOGAN thereupon resumed the stand and testified further as follows:

Cross-Examination (Resumed) by Mr. Wooden.

Q. Mr. Coogan, I am directing your attention to your testimony on page 23122, lines 12 to 14, where you say, "Until such time as the water rates were more or less stabilized we did not use water rates in arriving at our destination price in New York City."

Did you use water rates in arriving at your destination prices in New York City when the water rates became stabilized?

A. Yes, we have been using water rates in arriving at our prices to New York City for several years. I can't

give the exact number. Of course, prior to this time, you understand that we had nothing to do with the rate because we were under a contract there for many years.

Q. Has that continued for some years past to the present?

A. Well, of course, the Lehigh Valley base figure that we used makes the price to New York City, and has for some time.

Q. Well, then, you don't mean that you have used the water rate from Hudson Valley to New York in determining your New York delivered price?

A. Why, you would use it if it made a lower price, but, in view of the fact that the Lehigh Valley base
24564 figure that we use plus the rail rate to New York makes a lower price than our base at Hudson River plus the water rate.

Q. Well, if the Hudson base were the same as the Lehigh Valley then would the rate or would the delivered price to New York City be the same as it is now?

Mr. Leisure: If Your Honor pleases, we have so many facts to cover in this case that I think that if we confine ourselves to the factual situation we will have plenty to do. Mr. Wooden is going into the realm of theory now and asking what would happen under certain other circumstances. I don't think it is profitable to anyone to do that with this witness.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Leisure: Your Honor will see we are dealing entirely with theory, with a situation that hasn't been shown to exist ever in the past or likely to exist in the future. It seems to me that if we confine ourselves to the facts—

Trial Examiner Norwood: Well, it goes to the reasons for employing the method that the witness has testified to.

Mr. Leisure: There is no showing that it does. It is purely theory on something that we haven't had any factual basis for.

24565 Mr. Wooden: We have had—

Mr. Porter: Furthermore, the witness is asked to answer that question, when he has got to take into consideration not merely the particular circumstances that Mr. Wooden propounded in his question, but he has got to take into consideration all other considerations which might exist

at some future time when conditions are entirely different. It is a question that can't be answered, and I submit that it isn't a proper question. It is just like asking the witness: "If the dog hadn't stopped."

Trial Examiner Norwood: It is assuming uniform conditions except in the matter—in the difference in which he is hypothecating here.

Mr. Porter: No, Your Honor, because the witness has said that at the present time and for a good while past the price in New York based on Lehigh Valley and rail is lower than the price from Hudson based on water. Now, Mr. Wooden asked him, "If you reduce your Alsen base so that the Alsen base plus water makes a lower price than you are now getting from Lehigh Valley, would you then make your New York City price lower if something else had happened?" Why, the witness can't answer the question. It is purely hypothetical.

Mr. Wooden: Your Honor, the witness has testi-
24566 fied about the rail freight from the Lehigh Valley and from the Hudson Valley to New York City. He has testified about the base prices in effect at both places. He has testified about the water rate from Hudson Valley to New York City, and I think the question is abundantly based on fact.

Mr. Leisure: May we have it read?

Trial Examiner Norwood: As I understand it, he has told you why these prices were as they are there. He has told you the reasons behind the prices that were made and the system that was followed. Now, I take it, that this question goes to those reasons, and I think he has a right to test him on that.

Mr. Porter: But it doesn't, Your Honor. If it did, there would be no objection. He asked him about a price that he has, and then asked him why he has it—if he did that I would have no objection.

Mr. Leisure: It calls for the operation of this witness' mind. It doesn't go into facts at all. It calls for the operation of his mind and he is not an expert on a hypothetical situation.

Trial Examiner Norwood: Read the question again.

Mr. Leisure: If you will have it read you will see that.

(Question re-read.)

24567 Trial Examiner Norwood: I think on cross-examination he has a right to get an answer to that. The objection is overruled.

Go ahead.

A. Well, I have not attempted to predict what a figure is going to be in the future. It is impossible for me to do that. I would have to take all—everything—into consideration that existed in time. I don't know what change might happen in the water rates; I don't know anything about what is going to happen in the future.

By Mr. Wooden:

Q. Well, take it as of today. What would be the effect upon the New York City delivered price if your Alsen base were the same as your Lehigh Valley base?

Mr. Leisure: I make the same objection.

Trial Examiner Norwood: The objection is overruled.

A. Well, it is simply a question of addition. If the water rate into New York at the present time is 10 cents lower than the rail rate from the Lehigh Valley, or the rail rate from Hudson River, so that necessarily if you would add the two together you would have a little lower price, assuming that there is no change in the water rates, and that they take water delivery.

By Mr. Wooden:

Q. Well, you would not base New York City on
24368 the water rate, would you—you would base it on the rail rate?

A. Of course, there is no cement moves into New York on rail; everything moves into New York City by water,—rail and water.

Q. Cross?

A. Of course it does—it is all water delivery.

Q. Would you base New York City delivery wholly on the water rate?

Mr. Porter: Your Honor, that is objected to.

Would you do something if something else happened. How can the witness say what he would do in the future?

Trial Examiner Norwood: Read the question.

(Last question read by Reporter.)

Mr. Porter: How would you vote if President Roosevelt was defeated.

Trial Examiner Norwood: Read the question.

Mr. Wooden: It is not that at all.

Trial Examiner Norwood: Read the question.

(Last question again read by Reporter.)

Mr. Wooden: His whole practice for many years in

ning what at least I shall call the basing-point system, has been to base it on rail rates.

Why can't I ask him if he would base it on water?

Mr. Porter: No objection to asking him what he has done, but I do object to a speculative question as to
24569 what he would do next week, next month, and next year.

Trial Examiner Norwood: It is just a form of expression. He can ask him if he did not do that, and he may ask him why he did not do it, and then this question combines the two.

Mr. Porter: As Your Honor puts it, it is a perfectly proper question; but Mr. Wooden's question is a perfectly improper one.

Trial Examiner Norwood: I will sustain the objection to the form of the question; but he may bring that out.

Mr. Porter: We do not object to Your Honor's question.

By Mr. Wooden:

Q. Did I understand you correctly a few moments ago, Mr. Coogan, to state that you have for some years based your New York destination price, New York City destination price, upon the Alsen base plus water transportation to New York?

A. If that made a lower price in New York.

Q. Well, did it? As a matter of fact, didn't it make the same price in New York as the rail delivery from Lehigh Valley?

A. That would depend entirely upon the respective bases at the two mills that we have.

Q. Yes, and hasn't the Alsen base been just 10 cents higher in order to equalize that 10 cents' advance in
24570 water transportation?

A. It has not.

Q. It happens to be just the same figure, anyway, doesn't it?

A. It hasn't been 10 cents higher,—there have been times, as I remember it, back in the past, when it has been the same, and at the present time it is 20 cents higher than the Lehigh Valley.

Q. Well, hasn't there been over a long period of years a difference of 10 cents between the Alsen, or the Hudson Valley, and the Lehigh Valley bases?

A. There has been for some time,—I wouldn't say for

how long,—but at some time our Alsen base has been 10 cents higher than our Lehigh Valley base, but at the present time it is 20 cents higher than our Lehigh Valley base.

Q. How long has the 20 cents' differential been in effect?

A. Well, I think it was in the early part of 1938. I think that there was a reduction in our base figure in the Lehigh Valley, and we didn't reduce our Alsen price.

Q. And there was a period, was there not, some years ago, when the differential between the Lehigh Valley and Hudson Valley bases was less than 10 cents?

A. Yes, I think there was a short time when it was just the same.

Q. When was that?

24571 A. I don't remember.

Q. Was it during the 1931 and 1932 period?

A. I said I did not remember, and I wouldn't know it without having some documentary evidence to show me when it was.

Q. Is it associated in your mind at all with the period of time when the Lehigh Company put out its marketing plan late in 1930?

A. No, no connection whatever in my mind.

Q. I mean as to time period of time.

A. No; none at all in my mind, I don't—

Q. Can you describe the conditions which brought about the increase in the differential from 10 to 20 cents in the last year or two?

A. I have already explained it, that there was a reduction in the base figure which we were using in the Lehigh Valley of 10 cents per barrel, and we did not reduce the price at our Alsen mill.

Q. What were the conditions that brought it about in the Lehigh Valley, without affecting it in the Hudson Valley?

A. I don't know how to answer such a question.

Q. I don't, either.

A. I don't. If I were to recite each and every condition, or all conditions, or any condition, why, I would probably leave out a lot of them, and I don't think I ought to be asked such a question.

24572 Trial Examiner Norwood: Read that question, please.

(Last question read by Reporter.)

Trial Examiner Norwood: I do not know what they are.

The Witness: I know that one of our competitors reduced the base figure in the Lehigh Valley, and we followed it because it made a lower price over a great deal of territory, and in the judgment of our company it was not wise for us to make a similar reduction at our Hudson Valley mill, and we did not do it.

By Mr. Wooden:

Q. And no other Hudson River mill made such a reduction, so that the Hudson base price remained at 20 cents above the Lehigh Valley?

A. Yes, that's true today.

Q. I take it that that considerably enlarged the territory in which the Lehigh Valley base made the lowest delivered price?

A. To some extent, yes.

Q. How does it happen that all of the mills in the Lehigh Valley have the same base price?

A. I can only answer to our own.

Q. Well, you know that the Lehigh Valley mills do have the same base price, do you not?

A. I don't know the action of their minds as to why they have it, or anything else.

24573 Q. Well, my question was, if you knew or could explain how it happened that all of them had the same base price, and you say you cannot do it, is that right?

A. I said I could explain why we had our base price.

Q. That is not my question.

How does it happen your base price in the Lehigh Valley is the same as the other Lehigh Valley mills?

A. Because we are meeting the lowest price we find.

Q. The lowest base price as well as—

A. The lowest destination price.

Q. That involves meeting the lowest base price, too, at some times, at least in the Lehigh Valley, does it?

A. Why, no, because you don't quote the base price; you quote the base price plus the freight rate, so you don't meet the base figure that you are talking about.

Q. Well, when you meet the delivered base price based on a base figure, aren't you meeting that base price?

A. I am meeting the price at that destination.

Q. But based upon certain base price?

A. Based upon the lowest combination.

Q. Yes.

A. Your base price plus freight rate that we are using at that time.

Q. Was the base price in the Lehigh Valley ever, within your experience, the result of conference and
24574 discussion among the mills?

A. No, sir; not to my knowledge.

Q. Does that go, the same answer, as far as representatives of your company are concerned?

A. Yes, sir; as far as I know.

Q. Do you make any limitation as to time within which your answer applies?

A. No, I wouldn't make any limitation as to time.

Q. Do you think you would have known it if the base price in the Lehigh Valley had been the subject of conference and discussion among the mills?

A. Yes, I think I would have known it.

Q. Can you fix the time when the shift took place from a percentage rate of cash discount to a flat per barrel rate?

A. I think it was 1909, as I remember.

Q. Do you recall whether or not the old license agreements of that year provided for a flat rate of cash discount instead of percent?

A. They provided for a flat rate of discount, the license agreement.

Q. Now, the percentage discounts figured on varying gross mill prices would give varying net delivered prices, wouldn't they?

A. No, sir; they would not.

Q. Wouldn't they give varying mill nets as well?

24575 A. No, because the cash discount was on the delivered price.

Q. Is that still—even when it was a percentage, was it? Do you mean that you were giving a cash discount figured on the freight as well as on the mill price?

A. I can't answer whether that included the freight or whether it did not, but I don't think—I think we tried not to allow a cash discount on freight, or packages—that is, cotton packages.

Q. Wouldn't it be really extremely unbusinesslike to give a cash discount figured on freight—

A. It seems so to me, yes, and my memory, if I had

to make a statement, I should say that we did not allow cash discount on freight.

Q. Well, then, if you figured the cash discount on a percentage with the freight excluded, wouldn't that have given varying net delivered costs?

A. Well, if you could get it down in figures small enough to figure it out, it might; but if you find the figures you would get pretty far out into fractions.

Trial Examiner Norwood: Was the cash discount a discount on the amount that the purchaser would send the mill after paying the freight?

The Witness: Yes, that's my memory, that we allowed the cash discount on that amount.

By Mr. Wooden:

24576 Q. And with the mill nets of the various mills varying, depending upon the amount of freight deducted, and applying a percentage to those varying mill nets; would that give you a varying delivered cost?

Mr. Leisure: Now, is this just a general discussion, or is he talking about some facts, and, if so, let us have the time fixed so we will all be talking about the same subject.

Trial Examiner Norwood: Well, I think the answer to that is obvious.

Mr. Porter: Your Honor, there is another objection to it.

Mr. Wooden: I think it is obvious, too.

Trial Examiner Norwood: You have in evidence that you have various mill nets.

Mr. Porter: No, Your Honor, there is another objection to this question. It assumes that at that time there were varying mill nets. The evidence is clear that at that time the only base that was being used by the Alpha Company was the Lehigh Valley base, and that the only competition that they were meeting was with the mills in the Lehigh Valley, all of whom had the same freight rate. Therefore, at the time the percentage was used all of the mill nets were the same if the delivered prices were the same. Mr. Wooden's question assumes the

24577 conditions that exist today with mills all over the country, with varying freight rates, and varying mill nets, and that did not exist at the time that the percentage rate was in effect, so Mr. Wooden's question is assuming something that is not correct.

Mr. Wooden: Mr. Porter's statement assumes there were no mills producing cement outside of the Lehigh Valley in 1909.

Mr. Porter: Not that we were competing with, Mr. Wooden.

Mr. Wooden: Well, I don't—

Trial Examiner Norwood: I think you should bring out the facts if they are different than those suggested by Mr. Porter.

By Mr. Wooden:

Q. Were there not mills producing and selling cement outside the Lehigh Valley in 1909, Mr. Coogan?

A. Yes, sir.

Q. Weren't the Lehigh Valley mills competing with those mills outside the Lehigh Valley?

A. Mr. Wooden, I have explained quite fully, or tried to, that the matter of competition back in 1903, and 1904 and 1905, and a few years after that, is quite different from what it is today.

Q. Well, I thought my question was very simple.

24578 Trial Examiner Norwood: Read it.

Mr. Wooden: And you say something else.

Trial Examiner Norwood: Read the question.

(Last question read by Reporter.)

Trial Examiner Norwood: Answer that, if you know.

The Witness: Read my answer.

(Last answer read by Reporter.)

A. And we were competing with mills in other sections of the country.

By Mr. Wooden:

Q. All right.

Can you say how recently the Alpha Company discontinued the clause in its price quotations, disclaiming responsibility for damage in shipment?

A. No; my guess would be it was three or four years ago.

Q. Subsequent or prior to the N. R. A. Code?

A. I think it was during the N. R. A. Code.

Q. What connection did the Code have with your discontinuance of that?

A. I don't know whether that was included in with the Code forms that were submitted with the Code or not.

I would have to have that before me before I could answer that.

Q. Well, that represented a complete departure, did it not, from the recommendations made by the Trade Relations Committee of the Portland Cement Associ-
24579 ation years before to include such a clause in price quotation forms?

A. Well, as I remember it, back in 1915, such a recommendation—it was not a recommendation, it was a compilation of what was considered the best practices in the industry—and such a policy was included as being one of the best policies.

Q. Can you say whether or not there were any mills in the industry that quoted mill prices during the period when the license agreements were in effect?

A. Well, there were some mills that never did take out licenses; what they did I don't know.

Q. Well, the last part of my question was directed to—you don't know whether such mills quoted mill prices or delivered?

A. No, I can't tell what they did this far—at this late day.

Q. When you said, on page 21303 of the record, speaking of the advent of mills into western territory, I believe, line 8, "Of course, the advent of those mills into that territory had a gradual effect in lowering our prices,"—did you mean by that had an effect in lowering of mill nets?

A. Well, it had both effects. It would lower our destination prices if we quoted them, and if we lowered our destination prices without a lowering in the freight rate, of course our mill net would be reduced.

Q. Wasn't there a period, a rather long continued period, when freight rates showed an increase into that territory?

A. Well, to what period do you refer?

24580 Q. We will say the period between 1915 and 1920? Wasn't there—

A. Why, yes, of course, there was a tremendous advance in 1919.

Q. Well, that didn't have the effect of lowering your delivered prices during that period, did it?

A. Well, now, Mr.—you are mixing up two situations, the one situation when I talk about 1919, this advent of

new mills that I referred to was accomplished and now you are going back and you are fixing the advent of the mills with the freight rate rise that occurred in 1919.

Q. Do I understand that the lowering, the gradual lowering of your prices that you testified about had passed away before 1915, say?

A. Well, Mr. Wooden, by 1919, the time you are referring to, the Alpha Company were almost completely out of western markets. That is the reason they purchased western plants in 1920 in order to go back into those markets.

Q. Has the Alpha Company taken the lead in advancing prices at any time based on the Lehigh Valley base, or the Hudson Valley base, or at LaSalle, Ill.?

A. I don't remember that we had, but I wouldn't want to make that as a positive statement because it is possible that we have made some advances.

Q. Have you had any policy that you aim to
24581 follow in that regard as to whether you would not take the lead in making such advances, or that you would take the lead, or how has it been?

A. Why, no, we have no policy. If we thought it was wise to make a certain move, certainly we would make it.

Q. Can you recall any instances where Alpha did take the lead in advancing prices at LaSalle or Lehigh Valley or Hudson Valley?

A. Well, as I told you, I wouldn't want to state it as a fact unless I had before me all of the information about the change in prices. I couldn't recall at the present time any case that I know of.

Q. What I am getting at is whether the role of price leadership which you have assumed at basing points where you were the only mill, the only base mill, has been assumed by you at times in areas where there were other mills located at the base?

A. Well—

Mr. Leisure: I think we have covered that, Your Honor. This is not a question. The witness has said that he doesn't recall any instances. Mr. Wooden is merely stating now what he is getting at.

Trial Examiner Norwood: I don't think—

Mr. Wooden: I will help his memory if I can.

Trial Examiner Norwood: I see no harm in his
24582 answering that. Objection overruled.

The Witness: May I have the question, please?

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Porter: Your Honor, I think there is another objection to this question. Mr. Wooden has directed his attention entirely to price advances, and now he asks the question as to price leadership which covers both price advances and declines, but the way the question is put the witness' attention is directed entirely to price advances. I think Mr. Wooden should make it clear.

Trial Examiner Norwood: I don't think so. I think it includes both.

Mr. Wooden: I don't think it is any objection, anyway.

A. Well, if it includes both, the Alpha Company has made changes.

By Mr. Wooden:

Q. Now, can't you answer the question as to whether it has taken the lead in advances at those points that I have pointed out?

A. As I already told you, so far as I remember, I can't remember any particular case where we did, but I don't want to say that we did not.

Q. But you are quite sure that you have taken
24583 the lead at times in such areas in leading declines?

A. Yes, I think we have on more than one occasion.

Q. Did Alpha lead the advance in the Birmingham base area in 1929?

A. No, we did not.

Q. Do you know who did?

A. No, sir; I do not.

Q. Now, referring to your testimony on page 23126, where you were talking about the reasons for establishing a base at Ironton, you say, beginning on line 1: "We wanted to be in a position to set new prices in that territory for the time we felt we wanted to do it, so we put in a base at that mill in 1925."

Will you explain why you weren't in a position at Ironton to set new prices at that territory unless you made a base out of Ironton?

A. Well, we couldn't assert price leadership unless we had a base at our mill.

Q. In other words, you assume that non-basing point mills cannot assume price leadership?

A. No, I don't see how they can very well.

Q. Will you explain why not?

A. They could assume price leadership if they checked up prices in the territory served by other mills and found that mill making lower prices than their published
24584 prices, if they felt like going back and meeting those prices they could do it.

Q. Do you know whether or not they do check up in that way?

A. Well, I know what we do, and I assume that the other fellow is just as anxious to have as much information as he can get.

Q. Then given those conditions, your explanation doesn't explain, does it, because they do check up that way and they could, if they checked up that way, assume price leadership, and yet you said you think they could assume price leadership?

A. Well, you know, you and I had quite an argument yesterday over the fact of putting in a base at another fellow's mill. Now, there are a good many companies that feel that that is not quite the proper thing to do. It is the stand of our company that if we find prices in the field made under prices from our base mills, that we can go in and meet those prices if we feel like it.

Q. Do you know the grounds for the belief of some mills that that isn't the proper thing to do?

A. Well, I have read a lot about it either in your White Book or your Brown Book, and that is about all I know about it.

Q. I am not asking you about that. You don't know of the grounds from your experience?

24585 A. I do not. All I know about it is what I read in your reports.

Q. I understood you to say on direct examination that you put in the dual base at Ironton and made it higher on the southern territory in order to protect the advance made by the Alpha's Alabama mill; is that correct?

A. That is correct. We don't quote in the territory below the Virginia-Kentucky line from our Ironton mill. All of those quotations are made from Birmingham.

Q. Well, do you mean that the Birmingham base plus freight into Kentucky, for example, gives the same delivered price as the higher Ironton base; that is, would the higher base price at Ironton apply for the same territory?

A. Of course, you are a little mixed up there. I never said Kentucky. I said the southern line of Kentucky. Now you are bringing in the Kentucky prices.

Q. I am confused there.

Trial Examiner Norwood: I thought you said the Kentucky-Virginia line.

The Witness: I said the Southern Virginia—the Southern Kentucky line.

By Mr. Wooden:

Q. We will make it Tennessee, then. What I am getting at is, does your Birmingham base, plus freight, make the lower delivered price in there compared to the higher Ironton base?

24586 A. Generally speaking, yes. There may be one or two spots where it doesn't, but, generally speaking, it does.

Q. Has your Alabama mill base been the same in that area as the base prices of other Alabama mills?

A. Well, I think I wouldn't—how long and when?

Q. Well, you can differentiate, can't you?

A. At the present time our destination prices are figured on a base price from our Phoenixville mill, and we also use Boyles and North Birmingham in arriving at our destination prices—and Leeds. I want to put that in.

Q. My question is: Is your Alabama base price the same as the base price of other Alabama mills?

A. Well, of course, we have no base price. We have a base figure which we use in arriving at our destination prices. As far as I know, that base figure is the same as the other mills at Birmingham.

Q. You discontinued the dual base at Ironton and restored it some time later, as I understand it. Will you tell us when it was discontinued and when it was restored?

A. Well, not—I couldn't tell you from memory. If I had the exhibits which were put in, I think that would show.

Q. Well, I don't care about the exact date, but—

A. Well, I couldn't—

Q. But the year?

A. Well, I think it was along about 1931, or
24587 something like that, but I wouldn't want to say positively.

Q. Did you discontinue it at the time that you put in the base price at Osborn and Fultonham?

A. Well, I tell you, I wouldn't—if I would answer from memory, I would say no.

Q. Did you restore the dual base at Ironton at the same time you discontinued the bases at Osborn and Fultonham?

A. Now, Mr. Wooden, if you want to get me as to the time, you have got to get me the exhibits which were put in. I am not going to say "yes" or "no" to that.

Q. I am not trying to put you in a hole on that. I just want to know if those two things are associated in your mind as to time, that is all.

A. Well, they are not associated in my mind.

Q. All right.

Were the circumstances of your putting in a base at Cape Girardeaux mill similar to what they were in putting in the base at Osborn and Fultonham, Ohio?

A. Well, of course, the conditions existing in the markets where we meet competition from the Cape Girardeaux mill, I wouldn't want to say they were the same, better, or worse than the conditions existing in the other. All I can say is, that our company found the mill with the plant at Cape Girardeaux making lower prices in the field which we serve from our Alpha, Mo., mill. We figured
those prices back and then gave full force and pub-
24588 licity and based all our prices in that territory on that same figure.

Q. You didn't find that all their prices were so based before you took that action, did you? Just some of them?

A. I found enough to convince me that I was correct, and after reading Mr. Wecker's testimony in this case I find that we were still higher than the prices they were quoting.

Q. What was the base price you put in at Cape Girardeaux?

A. As I remember it, it was $1.35, but I think that was stripped.

Q. Did it go below that after you installed it at $1.35?
A. No, not—I think not.
Q. Isn't it a fact that the Cape Girardeaux price was cut down as low as 85 cents before it was restored?
A. Yes, you are correct there. There was a lower price put in at Cape Girardeaux.
Q. Did you put it in?
A. No, sir; we did not.
Q. Who did?
A. Well, as I remember it, the mill—the company with the mill at that point instituted that base.
Q. Was it reduced from $1.35 to 85 cents in one fell swoop, so to speak, or were there steps, a number of steps taken to get down to 85 cents?
A. I don't know whether it was in one, but there
24589 were not many steps; as I remember it. There might have been two, but—
Q. Did you follow it down to 85 cents every time—did you go down to 85 cents every time the price was reduced at Cape Girardeaux?
A. Yes, sir; we did.
Q. Did you ever have any communication from the Marquette mill about your putting in a base at Cape Girardeaux?
A. No, sir.
Q. Never had any complaint come to you, to your company, in any way about it?
A. Oh, I have heard gossip on the outside, sometimes among our salesmen, and sometimes among our customers, but I never heard anything particular about Cape Girardeaux.
Q. You mean to say that no representations were ever made to your company's representatives directly by the Marquette Company?
A. That is correct; yes, sir.
Q. Do you still say in view of the information that came to you in the trade, and from salesmen, and so forth, that you still don't know any of the grounds for a company objecting to having a base put in at its mill by another mill?
A. Only what I have read in the White Book and the Brown Book. It pretty fully covers it in there.
Q. And you never got it from these salesmen's reports, or anything of that sort?

24590 A. No, no; it was purely gossip, and so forth. I have accepted the report in the White and the Brown Book as being a fact, you know, in that respect.

Mr. Porter: That is dangerous.

By Mr. Wooden:

Q. Do you recall the circumstances under which the Marquette mill at Cape Girardeaux advanced the price at Cape Girardeaux 40 cents a barrel in July, 1932?

A. I remember there was an advance in price in 1932.

Q. Wasn't it an advance from 85 cents to $1.25?

A. I think that is about correct.

Q. Did you follow that and adopt that advance?

A. Yes, sir; we were very glad to adopt it and follow it.

Q. Do you recall a further advance of 10 cents in the base price at Cape Girardeaux in December, 1932?

A. I don't specifically recall it, but I know that there were advances made in December, 1932.

Q. Who led the advance in December, 1932?

A. Well, I don't remember that.

Q. Did Alpha?

A. I think not, but I am not sure of that.

Q. Did any representatives of the Alpha Company, so far as you know, attend any meeting or discussion among competitors just before this 40-cent price increase in July, 1932?

A. Not so far as I know.

24591 Q. Did you have any reason to believe that this 85-cent base price was below cost or not?

A. Whose cost do you mean?

Q. Below cost to the Marquette Company.

A. I don't know Marquette costs.

Q. Do you have any reason to believe that it was below the cost of any company in the industry?

Mr. Leisure: Well, if Your Honor please, I am going to object to that, whether he had reason to believe. We are getting into the field of conjecture again, and I don't think this witness ought to be called upon to guess as to his competitors' costs, and insert that in the record. I object to it.

Mr. Porter: Furthermore, the Alpha Company had a base of 85 cents. Why doesn't the Counsel ask the witness that question as to the Alpha base price, and the witness can answer it, but he can't tell anything about his competitors' costs and bases.

Trial Examiner Norwood: I think he should ask him for facts, but I think maybe this question does—

Mr. Porter: There is no basis for asking this witness about the Marquette costs.

Trial Examiner Norwood: I think he might answer that question. It might lead to some factual statements.

24592 Mr. Porter: If he wants information, he can get it by asking about the Alpha bases.

Trial Examiner Norwood: Objection overruled.

The Witness: May I have the question, please?

Trial Examiner Norwood: Read it.

(Record read.)

A. Well, I knew that it was below our cost because our company was sustaining very large losses every month during that year.

By Mr. Wooden:

Q. Didn't you have discussions from time to time in your experience with representatives of competitive mills in which you obtained information as to their costs, and you provided them with information as to your costs?

A. No, no authentic information. I think the matter of costs is a thing that is fairly well guarded among all competitors. I have never had any conversation about detailed costs, and I don't know the cost of any other mill.

Q. What about general information as to what total costs were?

A. I have told you I can tell you what our total cost was.

Q. I know.

A. And that is all that I can tell you.

Q. As to whether you haven't exchanged with your competitors information about your total costs.

24593 A. All you need to do, of the companies with listed stock, is to take their annual reports and you can simply figure it out just what they have left.

Mr. Wooden: May I have my question answered?

(Record read.)

A. No.

By Mr. Wooden:

Q. Wasn't there a cost committee at one time in the old Association, either the P. C. A. or the American Association, that obtained cost information and recommended cost accounting methods for the industry?

A. They did not obtain any cost figures. They did work out and recommend to the industry a system of accounting.

Q. Mr. Coogan, after the base price at Cape Girardeaux was raised to $1.25 in July, 1932, did you find the
24594 Marquette Company continuing to cut delivered prices?

A. I don't remember—.

Mr. Leisure: Just a moment.

A. (Continuing) —what the conditions were in 1932?

By Mr. Wooden:

Q. How is it that you remember so well what happened before you put in that Cape Girardeaux base in 1930 and can't remember what happened in 1932?

A. Because I had documentary evidence covering the change which the Alpha Company made.

Q. What has been your experience since 1932 in competition with the Marquette Company,—has it cut delivered prices as it did before you put in the base at Cape Girardeaux?

Mr. Leisure: Now, just a moment. Let us have the testimony quoted correctly, if he is going to purport to quote the testimony. This witness has not said that Marquette cut the prices before, and the question assumes that he has said that.

Mr. MacIntyre: I think the record is clear on the point.

Mr. Leisure: I object to that question on that ground.

Trial Examiner Norwood: Has the witness said that?

Mr. Wooden: I am very clear that he did.

Trial Examiner Norwood: I think that you might
24595 clarify that.

By Mr. Wooden:

Q. Well, you testified, did you not, Mr. Coogan, that the reason you put in the base at Cape Girardeaux was because you found the Marquette Company cutting delivered prices in territory served by your St. Louis mill?

Mr. Porter: That is objected to. The witness has never said any company cut prices. He said he found lowering of prices, but that is not cutting prices. The expression "cutting prices" has an invidious distinction, and the witness has never used it.

Trial Examiner Norwood: The objection is overruled.

The Witness: May I have the question, please?

Trial Examiner Norwood: Read it.

(Last question read by Reporter.)

A. I said that we found Marquette quoting lower prices at various destinations than we were quoting.

By Mr. Wooden:

Q. And that had the effect, did it not, of forcing you to reduce your mill net realization, or pass up the business?

A. Well, of course, if we quote lower prices we would reduce our mill net.

Q. Well, I wish I could get an answer to my question, whether or not you found the Marquette Company quoting lower prices than the combination of your base price

24596 plus rail freight to destination, after July, 1932?

A. I have had reports from the field that in some cases Marquette had quoted lower prices at some destinations than we had quoted.

Q. Did you find them to anything like the extent that you had found it before you put in the base at Cape Girardeaux?

A. Well, I don't—I couldn't answer to what extent we found it from time to time.

Q. Have you found it since 1932 in the case of the Marquette Company any more than you have with other companies?

A. According to our field reports, I should say probably yes.

Q. Have you confirmed those reports, or is it just some of the gossip that comes to you that you cannot confirm?

A. I would like to have somebody show me a way of confirming those reports. I would value the suggestion.

Q. Was the Marquette Company, prior to your putting in the base at Cape Girardeaux, more active in making lower delivered prices than other competitors?

A. In that territory I should say probably yes.

Q. Did that take the form of quoting lower delivered prices on State highway business, or on other types of business?

A. Well, from our reports, it was usually on what we call specified jobs.

Q. Well, would that include State highway business?

24597 A. No, because at that time the State highway business was—took public bids.

Q. Were you aware, during 1931 and 1932, of any criticism by various cement companies, other than your own, of the Marquette Company's practice of making lower delivered prices?

A. I don't remember any specific case, but I have no doubt that after a price had been made it was probably reported by our salesmen in the field.

Q. Well, my question was whether you were aware at the time of any criticism on the part of other companies against Marquette's making lower delivered prices?

A. Not to me.

Q. Well, my question was, were you aware of it. I did not ask you about anybody else.

A. Well, I am only aware of what I know.

Q. You are aware of what you are aware of, and all I want to know is what you were aware of.

A. I think I fully answered your question.

Q. Were you aware of any position taken by some of your competitors at that time that they would not remain members of the Portland Cement Association because of that situation of having base prices established at mills they did not establish themselves?

A. Well, I have seen that written some place, either in the Brown Book, White Book, or in this case. That is all I know about it.

24598 Q. My question goes back to what you knew at the time.

Did you know of some resignations from the Portland Cement Association because of base prices having been established at mills they did not establish such prices themselves?

A. As a matter of record, I know what the resignations were, but I don't know the cause of them.

Q. Aren't you aware that a number of concerns made their resumption of membership in the Portland Cement Association contingent and conditional upon Marquette Company going into the Association?

A. No, I don't know that, to my knowledge—only what I have seen in this case now, understand, and in the reports of the Federal Trade Commission.

Q. Did the Alpha Company resign from the Portland Cement Association at that time?

A. No, sir; they did not.

Q. Have you ever furnished your competitors, or any of them, with a list of your base prices?

A. No, sir.
Q. Have you ever received from any competitor
A. No, sir.
Q. —a list of their base prices?
A. No, sir.
Q. When I say "you" I mean your company.
A. Yes, sir; I am answering for the company.
24599 Q. Well, didn't you testify on direct that you wouldn't have any hesitancy in telling your competitor what your base price was?
A. You asked me if I had ever received a list of base prices.
Q. Yes.
A. That's entirely different from the other testimony.
Q. All right.
A. I said that I wouldn't hesitate, if I wanted to know, but it is not necessary.
Q. Well, have you at times informed a competitor what your base price was?
A. I don't recall ever having been asked what our base price was.
Q. And you don't recall ever having furnished it, whether asked or not?
A. I told you we had never furnished a list of basing points to anybody outside of our own organization. If anybody asked me what price we were using, or had been using, of any past transaction, I would tell them, but we have never submitted or furnished any list of any kind.
Q. You distinguish between a list of your base prices and furnishing information about some particular base price that a competitor asked about?
24600 A. Well, I don't understand your question. I think I have tried to make it as plain as possible and if anybody asked me what base price I used, or have you used at your mill, why, I would tell them, certainly.

By Mr. Wooden:
Q. Have you found—
A. It is not necessary for me to ask my competitor what their base figures are. I find it out from my own field reports, and I presume they do the same thing.
Q. Have you found it also by inquiry of them?
A. No, I don't inquire from my competitors as to their base figures.

Q. As I understand your testimony about the matter of minimum line hauls, you do not follow the changes in the railroad rates, or the switching rates, but adopt the rate used by a competitor who sets the minimum line haul charge?

A. In the case of our own company, we follow the movement of the railroad tariffs, in what minimum rate we use from our various basing points, and the
24601 others we pick up in the field and quote the same destination price that they quote.

Q. Without paying any attention to the rate itself, you just—

A. Usually, my experience—from my experience I say that is usually based on the minimum line-haul rate as published by the railroads.

Q. Do you know of any cases where the rate is higher than the minimum line-haul rate?

A. No, I do not.

Q. Do you know of any cases where it is less than 25 cents?

A. I do.

Q. Where it is not based on the minimum line-haul rate, it is merely based upon what you find your competitors are doing; is that right?

A. Well, all of our destination prices are based on what we find our competitors doing, and we know the destination price is near the other man's mill, would be on the same basis. The minimum line haul in many cases, of course, is less than 25 cents.

Q. Do you know of any cases where it is less than 25 cents, and, nevertheless, the rate used in the switching district is 25 cents?

A. The minimum line haul?

Q. Yes.

A. No.

24602 Q. How long did the Alpha Company use or continue to use its own freight rate book that it was using in 1910?

A. Until about 1917, I think, or 1916, something like that.

Q. Wasn't there a time about that year when Alpha and Lehigh, and the Atlas companies provided a freight rate service for the other mills?

A. Why, no.

Q. Did Alpha Company furnish its own freight book to any competitor?

A. Yes. I have explained, when we first got out that book, that it was a reproduction of the tariff rates and anybody that wanted it and would pay for the cost of printing it could have it. There were a few who took it and some who didn't.

Q. Did that cover rates only from your Lehigh Valley mill?

A. Originally it covered only rates from the Lehigh Valley mills. There were other basing points added from time to time.

Q. Does the Alpha Company furnish its salesmen with lists that show the arbitrary price points, the arbitrary prices at such points?

A. If there are any such prices within the particular salesmen's territory, yes.

Q. You don't compile those lists, do you, from information picked up at each of those points?

A. Sometimes we do and sometimes we don't.

Q. And when you don't how do you work up such price lists?

24603 A. Well, of course, in today's market, I don't know of any such price lists.

Q. When you have used such price lists and did not compile them from information picked up in the field, from what did you get them?

A. We learned of the existence of such prices from our field reports and by various quotations which were sent in to us, telephone calls from our customers, and our salesmen, and after we found out who had those, on two occasions I asked that particular company what prices they were quoting at these various points, and they sent me a list of the prices they were quoting.

Q. Did you send out that list or reproductions of it to your salesmen?

A. We sent him a list of prices which we were going to quote in his field.

Q. The same as those shown in the list you received?

A. Why, sure. We met the lowest price and that was the lowest price we found, so we met it.

Q. You said that you did that on two occasions. What companies were they?

A. The Lehigh Company on one occasion, and I think

the North American Company around Baltimore on another.

Q. When did those—when were those occasions?

A. Well, it was shortly after those prices had
24604 been published. Now, I imagine it was about '36, if I am not mistaken.

Q. Have you received from those competitors any changes that may have been made in such lists of arbitrary prices?

A. I don't recall any changes in the list.

Q. Is there a list of arbitrary prices prevailing in towns near Washington, D. C.?

A. Yes, sir; there is outside of Washington.

Q. Did your receive a list covering those prices from any competitor?

A. I don't remember whether that was in the North American list or not. Baltimore was in my mind. I am not sure.

Q. What about Lone Star? Did they get out a list of arbitrary prices out of Washington?

A. I have never gotten a list of prices from the Lone Star Company, so far as I know.

Q. In sending these lists of arbitrary prices at certain points to your salesmen, did you instruct them to quote those prices?

A. Why, certainly. When we sent them the prices we told them to quote them.

Q. Has there been a list of arbitrary prices out of Boston, points served from Boston?

A. Yes, sir; there were arbitrary prices in and about Boston.

24605 Q. Where did you get lists covering such places?

A. Why, I said I got that from the Lehigh Company. Now, you understand, of course, that I could easily—I won't say easily, but I could gather up these prices with our own organization, if we wanted to take the time to do it; and instead of doing that I simply—after I found that the prices had been published, why, I simply asked for them.

Q. Some of these lists contained scores and scores of towns, didn't they, with prices for each town?

A. They contained a number of towns but it was very—it would have been very easy to have picked them out. It would have taken longer, of course.

Q. Yes.

Has it always been true that the dealers will place orders without specifying the price?

A. Well, now, what do you mean by "orders"? I don't know just what you mean by "orders."

Q. I am referring to your direct testimony—

A. Your—

Q. —to the effect that usually—I believe you said even 75 percent of the cases your dealers placed the orders without specifying price.

A. Which is perfectly true, because they have our quotations and they know the price just as well as we do. They know what price we are going to charge them 24606 for that cement, and when they call up on the phone and order a car of cement, they don't always specify the price.

Q. My question is, whether that is a practice on the part of the dealers that has always existed in the same degree, or whether that is more noticeable in recent years than it used to be?

A. Well, with our customers, I should say that it has existed for many, many, many years. They expect us to give them the lowest—to meet the lowest price at the destination where they want it sent.

Q. When you say "many, many years" how far back does that go?

A. I would say 25 years.

Q. Prior to 25 years it wasn't the custom of the dealers to place orders without specifying the price?

A. Well, of course, 25—prior to 25 years the market and competitive conditions were somewhat different. The buyers are much more intelligent now, and there is much more public information. The price of cement is not a secret. Everybody knows what our price is.

Q. Do you think it is more intelligent for a buyer to place an order without specifying the price than to want to know what the price is when he places his order?

A. If he has confidence in the manufacturer.

Q. Confidence in what? That the price will be 24607 the same as others?

A. No, that the price will be as low as the lowest price in his market.

Q. Now, with regard to Alpha Company's policy in selling only recognized dealers, you brought into that, I

believe, the element of the dealer's credit. Isn't it a fact that Alpha has refused to sell unrecognized dealers even for cash?

Mr. Leisure: Now, I object to that question, if Your Honor please. It isn't correctly stating the record. The witness has not testified that Alpha sold only to recognized dealers. That is not the testimony.

Mr. MacIntyre: The record is clear on the point, if Your Honor please, that this witness—that his company sells only to dealers that his company recognized as dealers.

Trial Examiner Norwood: Yes.

Mr. Leisure: That is better.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

A. Well, I think you ought to add Mr. MacIntyre's suggestion to that. If that is added in with the question—I want it understood that when you say "recognized" it means recognized by our company only.

By Mr. Wooden:

24608 Q. All right, make your answer any way you like.

Mr. Werle: If that is so, Your Honor, then we object to the question further on the ground that it doesn't make sense. It says, "Do you then sell to—you don't sell to unrecognized dealers." Well, of course, you don't if you don't recognize them.

Mr. Leisure: If you recognize them you sell them.

Mr. Wooden: It still makes sense.

Trial Examiner Norwood: I think there is something there.

The Witness: Well, I can't understand the question.

Mr. Porter: I think it could be—

Trial Examiner Norwood: Have you refused to sell to parties whom you did not recognize according to your standards as a dealer even when that party offered cash? Is that right or not?

The Witness: I don't recall any particular case of that kind in my experience. I think I know the one case that is in your mind. It is probably J. P. Duffy, but that is a different situation.

By Mr. Wooden:

Q. Whether or not you recall any specific case, can you say what the policy of the Alpha Company has been on that subject? Have you refused to sell a dealer whom you didn't recognize as a dealer even when he offered
24609 cash, and aside from the Duffy case?

A. If I didn't recognize him as a dealer I wouldn't sell him under any circumstances.

Q. Even for cash?

Trial Examiner Norwood: You adhere to your policy in that respect?

The Witness: Certainly.

Trial Examiner Norwood: Without exception?

The Witness: Only without exception so far as the dealer is recognized as such by our own company.

Mr. Porter: Your Honor, I think that this ought to be clarified, that, of course, there are certain classes of direct sales that the company makes not to dealers, and this is confined to what we call dealer business.

Trial Examiner Norwood: Yes, I think that point is very well taken.

Mr. Wooden: Well, I think that is clear from the question.

By Mr. Wooden:

Q. You testified about Alpha refusing to sell dealers for delivery at other points than where they operated yards. Hasn't the Alpha Company's refusal in such situation applied even as to points where the Alpha Company had no dealers at the point to which delivery was requested?

24610 A. Well, I couldn't answer that question. I couldn't take every case and tell you whether or not we had a dealer at that particular point.

Q. Well, I understood your direct testimony to be that you did that, or you so refused because of a desire to protect the Alpha dealers at the point which shipment was requested. I am asking you whether you didn't so refuse, regardless of whether you had Alpha dealers to protect at the other points or not.

A. While we had that policy in effect, we probably did because we hoped to have a dealer in every town, and when we didn't have one we were always trying to get one.

Q. Is there any very large amount of requests by dealers for freight rate books?

A. Not a large request. You will find that now and then you get a request.

Q. I understood your direct testimony to be that between 1922 and 1924 there were no freight rate books published by the industry; is that correct?

A. I think that is correct, and after 1924 the freight rate books were published by only a small portion of the industry, the Nazareth Traffic Bureau.

Q. Can you say why there was no publication between 1922 and 1924?

A. Well, they had no traffic bureau.

Q. Can you say why they had no traffic bureau?

24611 A. Well, as I remember it, the cement Manufacturers' Protective Association, who formerly carried on that work, had gone out of business.

Q. Did it go out of business before the decision of the Supreme Court in 1925?

A. I don't know that they entirely went out of business, but they became quite inactive.

Q. Referring to this National Freight Bureau that gave a freight rate service, when was that,—along about 1929 or 1930?

A. Yes, about that time.

Q. Did the unsatisfactory service of that bureau cause any uncertainly in the delivered prices figured by use of that service?

A. As far as our own company was concerned, we checked our own books and kept them up to date, and kept them correct, and that's what called it to our attention that the Bureau was inefficient.

Q. Can't you tell me whether or not the unsatisfactory service of that Bureau caused uncertainty of variations in delivered prices?

A. Not to my knowledge; I couldn't; no, sir.

Q. Was it unsatisfactory because it did cause such uncertainty and variation?

A. Well, now, Mr. Wooden, if you want the story
24612 there, it was unsatisfactory in many respects. I came to Washington. I found out the help in the office had not been paid, and we—so far as our company was concerned—we simply withdrew from the National Freight Bureau; and had nothing to do with any uncer-

tainty of prices, or differences, or anything else that you might want to call.

Q. All right. That is the answer.

Does the traffic department of Alpha check each order with the railroad tariffs?

A. It does every order.

Q. Your Institute freight rate service does not save you anything in that respect, then?

A. There is a small saving—that is, it is easier to check a book issued by another concern than it is to prepare and publish your own books. The saving is not great, but there is a small saving.

Q. Well, that is for purposes of price quotations there is a saving, but there is no saving to your traffic department?

A. I just told you there was, because it is easier to check another book than it is to prepare and have your own book printed, so there is a small saving in the traffic department.

Trial Examiner Norwood: Well, does the traffic department go by the Institute book figures?

The Witness: No, sir; they go by the official tariffs of the railroads, which are on file in our office.

24613 By Mr. Wooden:

Q. And they check every order with the railroad tariff?

A. Every single one of them.

Q. Then, I may be dense, but I don't understand wherein the traffic department has any saving as a result of the Institute books.

A. If you can't understand it from what I have said, I am afraid you never will.

Q. All right.

Just before the freight rate service of the Institute was instituted, if I may use that word, didn't the Alpha Company cooperate with some of the larger companies in supplying a freight service to the other members of the Institute?

A. No, the only freight rate service that I know of that was in effect prior to the Institute was the Nazareth Traffic Bureau, and that was supported and subscribed to by six or eight small companies in the Lehigh Valley, and I presume the manager of that department—if you want

any information from me—he was always at liberty to get it.

Q. (Indicating) I am showing you now Commission's Exhibit 988-C, D, E, and F, and ask you if that does not reflect your recollections that Alpha Company was so cooperating in 1930?

24614 A. This is correspondence between the several traffic managers, and I want to call your attention to this paragraph: "The rate books of the other southeastern States which were formerly issued and distributed by other cement mills were taken over and re-issued by the National Freight Bureau in Washington, D. C. These books, of course, will now have to be kept up by the individual mills, and it has occurred to us that the issuance and distribution of such books might be assigned to such mills as are not at present keeping up any such books."

By Mr. Wooden:

Q. Weren't some of the State books assigned to the Alpha Company for keeping up in accordance with that suggestion?

A. It says here in the State of Kentucky that the Alpha Company would continue to furnish the information because they had a complete book for that State.

Q. And furnish it for the use of competitors?

A. For anybody that wanted to use it.

Q. Yes.

A. Not only competitors, but customers, if they wanted to use it.

24615 Q. On Commission's Exhibit 988-C, a statement is made, "Listed below are the rate books which are being issued and distributed among the various southeastern mills under the arrangement which was made in the early part of 1928."

What was that arrangement?

A. Well, I presume that refers to the National Traffic Bureau, that was about the time that they came into existence, in 1928, or the early part of 1929. Now, I don't know when that refers to.

Q. Weren't the rate books of some southeastern States issued by certain cement mills before the National Freight Rate Bureau ever came into existence (handing exhibit to witness)?

A. (Examining exhibit) No, I don't think this exhibit indicates that at all.

Q. I am referring to the language where it says: "The rate books of the other Southeastern States which were formerly issued and distributed by other cement mills were taken over and re-issued by the National Freight Rate Bureau."

A. Well, I can't tell from that whether those books listed for five States were issued by the National Bureau or not.

Q. Well, wasn't there a period of time before the National Bureau was in existence when some of the cement mills provided that freight rate service for their competitors?

24616 A. Well, not to my knowledge. Our own company did not, as far as I know. Now, we would not hesitate to give anybody freight rate information if anybody wanted to see our books,—if anybody wanted a copy of them, why, we would give them to them willingly. It is only a compilation of information which was open to the public.

Q. If you had information about a reduction to freight rates that came to you before it came to your competitors, would you be glad to inform your competitors of that reduction?

Mr. Leisure: Oh, I object to that, if Your Honor pleases.

Trial Examiner Norwood: The objection is overruled.

A. I would not; I don't deal with my competitors on freight rates. I wouldn't hesitate to call it to the attention of the Freight Rate Bureau of The Cement Institute.

By Mr. Wooden:

Q. For the purpose of having the Institute notify all competitors of that reduction?

A. I don't know what they would do with it if I called their attention to any errors or omissions, that is up to them to decide. They do issue corrections.

Q. Well, isn't that the purpose of your reporting changes in freight rates to the Institute, so that competitors may be notified?

A. No, the purpose of my reporting that is so
24617 that the freight rate books of the Institute will truly represent the published tariffs of the railroad.

Q. And correction sheets be issued, if necessary?

A. Why, certainly; they issue correction sheets to official tariffs, they have to issue them to—

Q. The correction sheets go to your competitors?
A. Well, they go to all subscribers, of course.
Q. Can you tell me why your Manheim, W. Va., mill is not included among the headline points of the Institute's Virginia freight rate book?
A. Well, I would want to see a Virginia rate book to make sure that it was not, and, furthermore, the freight rate structure out of Manheim is not very favorable in the State of Virginia.
Q. Do you make shipments from your Manheim mill into the State of Virginia?
A. Very few, if any.
Q. In your quoting for Virginia highway business, didn't you propose to ship from the Manheim mill?
A. We probably show it as one shipping point, but certainly we had more favorable rates from the Lehigh Valley to many points in Virginia, than we do from Manheim, and certainly have much more favorable rates from Ironton, Ohio, into Virginia than we have from Manheim.
Q. But don't you have many places in Virginia
24618 where the rates are more favorable from Manheim?—
A. No, sir; very few.
Q. —than either Ironton or Lehigh Valley?
A. No, sir; very few.
Q. Can you tell me why Institute's freight rate book for Virginia does not include among the headline points the mills at Security, at Hagerstown—
A. I wouldn't answer the question unless I had the book before me.
Q. —or York, Pa.?
A. I said I wouldn't answer the question unless I had the book before me.
24619 Q. Mr. Coogan, you testified about a dual base being in existence in the Lehigh Valley about 1931 or 1932 with, I think, prices for New Jersey delivery lower than the other; is that correct?
A. That's correct.
Q. How did that dual base come into existence?
A. We found prices in the field which indicated
24620 that base, and we followed them through, and then we met those prices at destination.
Q. Can you explain the conditions that led to the use

of a lower base in the Lehigh Valley for New Jersey delivery?

A. Well, as I have told you, we did not institute the base. We simply met the price that we followed. In a general way; I do know that it was used in an effort in trying to meet foreign competition.

Q. Was it just certain portions of New Jersey that had the lower base applicable?

A. Oh, no. As I remember it, it was all of New Jersey.

Q. Do you mean to say that the foreign competition was effective right up to the New Jersey-Pennsylvania line, and therefore, the dual base was made effective at the State boundary?

A. You may find foreign competition any place with the return hauls of truckers. You don't know where it is going. But, generally speaking, it don't go much beyond 50 miles inland.

Q. You had a lower base in effect at Phillipsburg, N. J., almost across the river from Easton, didn't you, at that time?

A. Yes, sir.

Q. And how much lower was the New Jersey base?

A. As I remember, it was 10 cents.

Q. When did that dual base cease to exist?

A. I don't remember. I want to call your attention, too, that the dealers in Easton and Phillipsburg
24621 compete with each other, and when we found that dual base in New Jersey we also put it in on our prices to Easton, Pa., because the dealers were competing with each other, and we felt that our dealers had to have the same price.

Q. Was the dual base in the Lehigh Valley applying to New Jersey discontinued in 1932?

A. I would not answer that question unless I had an opportunity of looking at our records.

Q. There were some increases in Lehigh Valley base prices in the summer of 1932, were there not?

A. I think so; yes, sir.

Q. Can you say whether or not that was probably the time when the dual base was discontinued in New Jersey?

A. Well, anything is probable.

Q. Anything is probable but not everything is possible.

A. I told you I really didn't remember when it was taken out. I might say, that as far as 1932 is concerned,

the Alpha Company would grasp any opportunity that they could in order to stop the large losses which we were sustaining during that year.

Q. With regard to the subject of diversions in transit, hasn't the Alpha Company been interested in preventing such diversions only in cases where it operated to reduce the delivered price?

A. No, we have been—we have done everything
24622 we could in our company to prevent diversions of any kind.

Q. Regardless of their effect on the delivered price?

A. Yes, sir; because it disturbs our market conditions and price is not the only consideration.

24623 By Mr. Wooden:

Q. Do you remember whether or not the old license agreements had a provision against diversion?

A. No, I don't remember whether the license agreement had it or not, but I know our company has had it since prior to the license agreement.

Q. I believe you said that arbitrary prices were put at the eastern seaboard points in territory where the prices were artificially depressed to meet foreign competition; is that correct?

A. I think that is, yes.

Q. Would you say that prices were artificially depressed in Ohio, when you put in your base at Osborne and Fultonham?

A. I would not.

24624 Q. Mr. Coogan, I want to say that you were wise in not taking my assumption about the absence of the Manheim mill from the Virginia rate book, because I find that I was in error. It is in the Virginia rate book. But in that connection can you tell me why the mills located at York, Pa., and Hagerstown, Security, Md., Martinsburg, W. Va., are not in the Virginia rate book, which is Exhibit 1000?

Mr. Leisure: If Your Honor please, the witness said this morning he didn't know.

Trial Examiner Norwood: I think he is asking him about certain stations there. He may ask him again.

The Witness: May I have the question, please?

(Question read.)

A. I presume because nobody ever asked to have the rates put in. If any of those mills want their rates in

that book, they can have them in there any time they want them, I guess.

By Mr. Wooden:

24625 Q. And the Alpha Company see no need of having them in there?

A. We haven't. If we found the need, we would ask the Institute to put them in.

Q. Well, why is it that you don't need those mills in the rate book as you do the ones that are in the rate book?

A. Well, mention the mills again and I will tell you. The freight rates from York are certainly not favorable into Virginia.

Q. You mean they are higher than Lehigh Valley?

A. At least as high if not higher.

Q. Well, wouldn't you want them if they were at least as high?

A. I don't understand your question there.

Q. I say, wouldn't you want them in the rate book if they were—

A. I said if they had wanted them in the rate book, we would have requested them. So far as we are concerned, we are not interested in it. We have no mill at York.

Q. How about the other mills?

A. We have no mill at any of the points you mentioned.

Q. Why aren't you interested in knowing the rate from those other mills that are not in the Virginia rate book that I named?

A. We have that information in our office if you
24626 want it at any time. We have the information, rates from all mills in our office. We don't need it in a rate book.

Q. Now, referring again to this matter of diversion in transit, did your traffic manager, Mr. Apgar, work with traffic managers of other cement companies in inducing the American Association of Railroads to accept the stamp-on bills of lading regarding diversion?

A. Yes, sir; I think he did.

Q. Do you draw some distinction between your company working with competitors in some such way as that and understanding or an agreement among them?

A. I certainly think that we have a perfect right to act with our competitors on anything that will improve

or bring about a better freight rate and freight service situation at our mills.

Q. Well, did the stamp restricting diversions come within the category you just named?

A. I think it does, yes.

Q. In what way?

A. Well, it puts a certain moral obligation on the railroads not to divert shipments without the approval of the shipper, and inasmuch as we sell at delivered prices we feel that we have a perfect right to control the shipment until it reaches destination.

24627 Q. I believe my question was directed to whether you drew any distinction between an understanding or agreement with competitors, and just working together with competitors towards a certain end.

A. I think I answered that question and told you I thought we had a perfect right to work with competitors on a matter of rates and freight service, and kindred matters of that kind.

Q. I am still seeking to get your conception of what an agreement or understanding is, by asking you if that is one, or whether that is just merely working together.

A. Why no, it is no agreement; it is simply working together.

Q. All right.

A. And getting the best you can out of a common enemy, I might call it—a common friend, I better put it.

Q. Who is the common enemy?

A. The railroads—you are getting as much as you can, certainly.

Q. Did I understand you to say just before noon that the Alpha Company had not worked together with
24628 the Lehigh Company, and the Atlas Company, with regard to providing freight rate service to competitors?

A. Well, from that exhibit you showed me, it is evident that there was some work done thereby furnishing freight rate information.

So far as our company is concerned, we will furnish that freight rate information to anybody that asks for it.

Q. (Indicating). Well, I am showing you Commission's Exhibit 3199, which is a portion of the transcript of the record in the old Cement Manufacturers' Protective Association case, and referring to the first letter com-

prising that exhibit,—does that refresh your recollection about Mr. Apgar working with Lehigh on that matter?

A. I thought you were talking about the Institute, and no prior to there; now you are switched back to 1916.

Q. Well, whether I made that clear before or not—

A. No.

Q. —you did not intend your answer to apply back at that period?

A. This situation which you now present happened in 1916, and was to meet an emergency condition brought about by an increase of something like 40 percent in the rates here.

Q. Well, 40 percent increase was in 1920, not 1916.

A. In 1919, I think 40 percent increase.

Q. Yes.

24629 The exhibit relates to 1920, so far as the 40-cent. increase, or per cent, or whatever it is.

A. Forty per cent, it is.

Q. The other part of the exhibit relates to 1916 (indicating):

A. Well, as far as the 1916 is concerned, there was—those books applied only to the northeastern section of the United States, and very few of the Respondents in the present case were involved in it at all, and there was no—regardless of Mr. Apgar's letter—there was certainly no understanding that anybody must or must not use those books.

Q. Was there ever any understanding between the Alpha Company and its competitors to the effect that they were to use the freight rates compiled and circulated through the Cement Manufacturers' Protective Association until notified of a change in rates by the Association's secretary?

A. Well, I think what you are referring to here is simply a chance remark that was made at a meeting by a member. There is nothing else to back that up at all, as far as I know. There was no obligation on the part of anybody in the Protective Association to use or not to use the books; they could do as they pleased.

Q. Well, you participated in that discussion, did you not?

A. I don't know that I participated in it. I remember the discussion.

Q. (Indicating.) Directing your attention to Commission's Exhibit 3191-B, doesn't that show that you participated in the discussion on that subject?

A. Where, please?

Q. (Counsel indicates to witness on exhibit.)

A. I think in fairness, we ought to read my statement into the record, if you have no objection.

Q. I have no objection after you answer my questions.

A. All right. I took part in the association, and here is what I said—

Q. Well, just wait a moment. I will give you an opportunity, if you want to have it.

Mr. Swett,—what company was he with?

A. Lehigh.

Q. Didn't he say on that occasion: "It was further understood that the member companies use these association freight rates until they are notified of a change in the rates by our secretary, regardless of what source they secured information as to a change in rate, or from Mr. Coogan."

Mr. Leisure: Will you fix the date, Mr. Wooden?

Mr. Wooden: 1916.

A. That so states, and there is no reply to it.

By Mr. Wooden:

Q. Yes.

A. Now, I think inasmuch as you have read Mr. 24631 Swett's statement, you ought to read mine.

Q. If you wish to, I have no objection.

A. All right (reading): "We have felt until the Association gets in working order that we had better continue notifying everybody for, say, another month at least, and by that time things here will be in such shape as to handle it from this office, so until then, gentlemen, we will continue to notify you of the changes. In connection with these freight books we believe that with the corrections we have made on them that at the present time they are correct. I guess practically all of the companies are using that book as a basis, and it seems to me that if any company notices any difference from what is shown in these books that the secretary of the Association, for the present—if you want to do that—notify us at once if there is any error. We are sure we have a correct list of the freight rates as they are."

So all that was was a compilation of the rates shown in the published tariff of the carrier put in convenient form.

Q. You say that under the freight rate service furnished by The Cement Institute there has been no understanding that the members would use the rates shown in the freight rate books or correction sheets regardless of whether they represented the actual existing current freight rate or not?

A. Our company has no such understanding.

24632 Q. Can you cite any instance where your company has put a reduced freight rate into effect without first notifying the Institute?

A. If we find anything wrong with the Institute rate books, we use the correct rate and then we do notify them if we find anything wrong in it immediately.

Q. And in case of a reduction doesn't that put you in at a given destination at a lower delivered price than those that don't have that information?

A. Well, everybody gets information about reduced price—reduced freight rates. That is not peculiar to the Alpha Company. We are not the only ones that get it.

Q. But you get the information for some destinations that other companies are not interested in, don't you?

A. Well, if they are not interested in it, why, then they wouldn't be interested in what prices we quoted there, either.

Q. I mean, they are not directly, substantially interested?

A. I have told you that our instructions are that under no circumstances must we ever use any rate that we know is incorrect; that we should use the correct rate and then notify the Institute.

Trial Examiner Norwood: Regardless whether it is in the books or not?

The Witness: Yes, sir.

By Mr. Wooden:

24633 Q. So I understand that it is the practice and policy of the Alpha Company to use a reduced freight rate and quote on it before it gives notice to the Institute?

A. I haven't said that we found any such omissions or errors in the Institute's freight books. I don't remember, myself, offhand of any. I have seen a few referred to in this case to some place where probably nobody was quot-

ing, but I will say this that as a freight book, that the Institute's freight books do show the correct rates taken from the published tariffs. We might have found an exception, and if we did we used the correct rate and notified them.

Q. You quote on the correct rate before you notify them?

A. Yes, we would quote on the rate and then notify them right away.

Q. In other words, simultaneously?

24640 Did I understand you on direct to say that Alpha refused to follow an advance or increase at LaSalle in 1937 until the latter part of the year?

A. Well, now, you are—we refused to follow an advance made by a competitor at LaSalle.

Q. And who was that?

A. That was the Marquette Company.

Q. Do you remember the amount of the advance?

24641 A. As I remember it, it was 10 cents a barrel.

Q. And then later in the year, do I understand you did put in such an increase at LaSalle?

A. Early in 1932 the Marquette Company advanced prices at LaSalle 10 cents a barrel; the Alpha Company did not follow that price.

Q. In 1932?

A. In 1932.

Q. I am talking about 1937.

A. In 1937, I should say 1937,—and the Alpha Company did not follow that advance. I don't know what our competitors did. I think some followed it and some did not. That price was later on withdrawn, and the price change which occurred in December of that year was an entirely different thing, and came about under conditions which we thought warranted us in meeting that advance.

Q. What was the different condition that led you to refuse to follow in the early part of 1937, and then follow it in December, 1937?

A. Our financial results for 1936 and 1937.

Q. You say that later on that advance was withdrawn. As a matter of fact, it never really became effective, did it, when you didn't follow along with it?

A. I don't know how the other people handled it. I don't see how it could be.

24642 Q. Wasn't it withdrawn within a five-day period?

A. No, I think not. I think it was in the field longer than that, according to my best recollection.

Q. Well, wouldn't you say that the effectiveness of an advance depends upon the willingness of all competitors to accept and follow it?

A. Well, that's the attitude of our company, that we have to meet the lowest price quoted at the destination.

Q. Well, in the case of an advance yours would be—

A. Ours would be the lowest—

Q. —the lowest price?

A. —eventually the other fellow has to come to it.

Q. Unless you go up with him?

A. Well, if we don't—if we don't go up, why, then, we have the lowest price.

Q. Obviously.

My question was whether the effectiveness of an advance does not depend upon the willingness of all competitors to accept it and adopt it?

A. No, I wouldn't say that.

Q. Then you can have different prices in effect at the same time?

A. No, I don't think we ever will for any length of time, but I think very largely it depends upon the importance of the competitors, and the commercial con-
24643 ditions existing at the time of the advance. I think all of those things would have to be weighed as a general thing. Whatever you say or do the price will drift to the lowest level in any given market.

Q. You wouldn't say that Alpha was a sufficiently important competitor to prevent an advance going into effect at LaSalle unless you went along with it, would you?

A. It would appear that we had that effect.

Q. Was it Marquette that took the lead in December, 1937, when it did become effective?

A. I am not sure of that, but I think so.

24647 Q. Now, as I understand it, Mr. Coogan, the present practice regarding the handling of cloth bags is to lease them on certain price terms of 10 cents a bag, and refund the 10 cents when the bags are returned to them; is that correct?

A. Yes, that is what our own company does; and I think, generally speaking, that is what the industry does.

although I think there are some that still do not carry the leasing arrangement.

Q. When did that leasing provision go into effect as distinguished from the time when I understood the bags were sold outright?

A. We put it in in 1918.

Q. That was about the time that others put it in?

A. I don't know when others put it in. I have no information. We put it in as a matter of taxes because we—under the old plan, the charge for the bags was included in with the profit and we went to the leasing arrangement in order to obviate the tax matter, and it was done entirely upon the advice of our own counsel.

Q. Well, wasn't the handling of allowances for bags a rather troublesome and competitive difficulty back at that time?

A. You mean to our company?

By Mr. Wooden:

Q. To your company or in the industry.

A. It has always been troublesome to our company.

Q. Has it been troublesome to your company in recent years as a competitive proposition?

A. Oh, yes. Our customers will always say to us that our competitors give them full credit for bags.

Q. You mean give them credit for bags that are 24649 in bad condition, and things like that?

A. Well, I said full credit. That is what I mean.

Q. Wasn't there a time when the handling of bag allowances was used as a cover for cutting prices?

A. Do you mean for secret rebates or allowances? Or what do you mean "for cutting prices"?

Q. Yes. All right. I will put it that way,—rebating bags to result in a cut price?

A. Well, I have told you that we had complaints from our customers that our bag inspection was more stringent than our competitors. Now, we never were able or could confirm those statements.

By Mr. Wooden:

Q. Did you ever know of a condition of affairs whereby the mills would allow a larger allowance per sack than the allowance that they were originally charging? In

other words, if they charged 40 cents they possibly would allow 15 cents.

A. Mr. Wooden, I have heard all manner of things. If you want me to recite all of the things that I hear about my competitors, it would really make quite a volume.

24650 Q. Have you heard of that particular one during your experience in the industry?

A. I don't—I might have heard of it, but I don't know. I would pay no attention to it if I did hear it, because so far as the Alpha is concerned we don't do business that way.

Q. As a matter of fact, wasn't the effect of handling bag allowances upon prices discussed at meetings of The Cement Association?

A. Well, I don't know what cement associations you refer to, or what year you refer to.

Q. Well, I am including not so much an association, but wasn't it discussed by competitors in meetings that they held, and in which meetings the Alpha Company was represented?

A. Will you state the time?

Q. My question is not limited as to time. You can limit it if you want to.

A. All right. My memory goes back to 1902, when there was a meeting at which the question of bags was discussed.

Q. Was that the organization meeting of the old American Cement Manufacturers Association?

Mr. Leisure: I object to that, Your Honor. It goes beyond the complaint; it goes beyond the direct examination entirely,—this last question.

Mr. MacIntyre: If Your Honor please, Mr. Leisure asked this man if they ever had meetings, discus-

24651 sions, or understandings, or agreements, and that went back all the way to creation, ever since this man knew anything about the industry.

Trial Examiner Norwood: I think he may tell us that. Objection overruled.

A. There was no understanding or agreement at that meeting. I said the question of bags was discussed.

Mr. Wooden: Will you read the question, please?

Trial Examiner Norwood: Read it.

(Question read as follows:

"Q. Was that the organization meeting of the old American Cement Manufacturers Association?")

A. No, I don't think that was the organization meeting. I think that the American Association of Portland Cement Manufacturers was formed shortly after that meeting, or some time about that time.

By Mr. Wooden:

Q. Well, at meetings subsequent to that time was not the subject of handling—the subject of bag allowances discussed in groups and at meetings of competitors at which the Alpha Company was represented?

A. Well, I certainly did not discuss any question about bags, and I don't remember anything except again what I read in the White Book or the Brown Book which referred back to the years 1904, '05, and '06.

24652 Q. Will you state whether or not, Mr. Coogan, at a meeting of the Cement Manufacturers' Association, credit managers' branch, on May 21, 1917, you made a motion that the meeting reaffirm the present policy so far as the handling of empty bags and bag credits are concerned?

Mr. Leisure: What exhibit are you reading from, Mr. Wooden?

Mr. Wooden: It isn't marked. It isn't marked. I am asking him—

Mr. Porter: Do you have an exhibit that isn't marked?

Mr. Werle: You mean it isn't an exhibit?

Mr. Wooden: It isn't an exhibit.

Mr. Werle: Is the date of that 1903?

Mr. Wooden: 1917.

Mr. Werle: 1917?

Mr. Wooden: Comparatively modern.

Mr. Porter: Was that the minutes of some meeting? What is it?

Mr. Wooden: Yes.

The Witness: Meeting of the Cement Manufacturers' Protective Association, Credit Managers' Branch. It is evident that I made that statement.

24670 Q. I would like to know why you wouldn't bid on those invitations that specified a comparatively small quantity of cement on an f.o.b. mill basis but did not show the destination where it was to be used.

A. We didn't consider these subsequent inquiries seriously at all. We simply took them up and talked a little about them in our own office and decided they were part

and parcel of the original inquiry, and we would have no part in it at all.

Q. Haven't you subsequently bid where the invitations gave you the destination?

A. Yes, sir; I think we have.

Q. And you thought such invitations were in good faith?

A. Most of those invitations came from the other departments of the Government, and they didn't—they didn't bear such a close resemblance to the Good Friday bid that these subsequent bids, to which you now referred, do bear.

Q. Didn't even the Procurement Division subse-
24671 quently invite bids giving the destination?

A. I think they have; yes, sir.

Q. And you thought such bids were in good faith—such invitations were in good faith?

A. But they were on an entirely different basis than from what is in these bids.

Q. Different in that respect?

A. No, different in other respects, too.

Q. What other differences do you have in mind there?

A. Well, I don't— Mr. Wooden, as I have said before, we wouldn't have quoted on such an inquiry if you would have brought it in and offered us the business.

Trial Examiner Norwood: That doesn't answer the question.

Read the question.

The Witness: You can't answer the question.

(Question read.)

Trial Examiner Norwood: Have you in mind any other differences?

The Witness: I have stated our objections to our making any quotation on such an inquiry.

Trial Examiner Norwood: Do you or do you not have in mind any other differences?

The Witness: Oh, yes. There are other bids there. They ask for a mill price, and they stated right in it
24672 that the bids will be canvassed on a delivered basis. Now, if they want to buy on a mill price, why don't they buy on a mill price and award the business on that basis?

By Mr. Wooden:

Q. Well, that is the same thing, isn't it? I am asking whether there was any difference that you had in mind. It

seems to me you are just telling us that one difference that I was asking about and not pointing out any other. Can you point out any other differences?

A. Well, that is pointing out another one. You didn't mention the fact that they asked for a bid and they said in the bids that they would canvass it on another basis.

Q. But that involves the question of destination being known or not. Well, we will pass it.

Mr. Coogan, can you point out any substantial differences between the forms used by the Alpha Company for its contracts and the forms used by competitors of the Alpha Company?

A. No, I can't—I have never compared the two.

Q. Can you point out any substantial differences between the terms of sale and discounts of the Alpha Company and those of its competitors?

24674 A. I will answer as to discounts. Terms of sale, —I would want to compare those before I would answer the question.

I think, generally speaking, the cash discounts granted by the various companies are, generally speaking, the same. Now, I am not speaking for all over the country because there are certain sections of it that I know nothing about.

By Mr. Wooden:

Q. Well, I wasn't asking you to speak for the country, the whole country, but for the part of it where the Alpha Company is in competition with other companies.

I take it that at the present moment, at any rate, you can't point out the differences in terms of sale?

A. I said that I would not attempt to point out any terms of sale. I did say that so far as my experience goes, the discount is the same.

Q. Can you point to certain specific policies of the Alpha Company which are intended and designed to give the Alpha Company an advantage over its competitors?

24675 A. I am surprised at the question because I don't think that our competitors would allow such a condition to exist more than 20 or 30 minutes.

By Mr. Wooden:

Q. Well, I take it, then, that your answer is no, because it is impossible for you to maintain any policy that gives you an advantage over your competitors?

A. I told you that our competitors would meet just the same as we would meet—

Q. Well, that is the reason for your answer, as I see it, rather than your answer. Isn't your answer "no" because of the fact that you have just stated?

A. No, I didn't say "no."

Q. What is your answer, then?

A. I think my answer is all right.

Q. I am giving you a chance now to point out any specific policies of the Alpha Company that are designed and calculated to give it an advantage over its competitors.

24677 A. It is the design of the Alpha Company to meet the lowest prices and the best terms and conditions existing at any place where they sell the cement. Beyond that we don't care to go and don't try to go.

By Mr. Wooden:

Q. You don't care to press your advantage over competitors, any advantage you may have; is that correct?

A. I know that you can't in a competitive market.

Q. Is it your conception of competition that the contest must always result in a draw?

Mr. Leisure: I object to that question.

Trial Examiner Norwood: The objection is overruled.

A. My concept of competition is when we meet the lowest price at any destination, that we have fully met competition.

I have no interest in what the other fellow does, except when I meet the lowest price.

Q. (Indicating) Showing you Respondents' Exhibit 483, being a telegram to your company, Chicago office to your Easton office, stating that they picked up Lehigh quotations indicating 10 cents per barrel increase at Cleveland, LaSalle, and Mitchell, and they state that they are sending out quotations taking advantage of this competition.

Mr. Porter: What is the date, Mr. Wooden?

Mr. Wooden: February 10, 1930.

24678 By Mr. Wooden:

Q. Isn't that what you do when your competitor gives you a chance to increase the price, you just move it up, and then say you are taking advantage of that competition rather than meeting it?

A. If we think it is wise to do so,—you just finished examining me on one case where we didn't do that.

Q. Well, your office said you were taking advantage of competition by moving your price up to meet it, didn't it?

A. Certainly, we wanted every advantage that we could get, and we want all the money for our product that we can get.

Q. Do you figure that you can get more, and make more, by meeting competition just in the way that you have described?

A. I think we would be very poor business men if we quoted lower than the lowest price existing at any place where we sell cement; it would be an admission of weakness on our part.

Q. You do not look upon competition as a contest between competitors seeking to give better and superior inducements to the buyer?

24679 A. There, of course, is a limit beyond which no sensible man would go, and we feel with the product of equal quality that when we meet the lowest price we have fully met competition, and certainly we are not looking for a chance to give away any more than we have to.

By Mr. Wooden:

Q. As a matter of fact, your quality is superior to some, is it not?

A. Not in the eyes of the buying public, I should say not.

Q. Now, regarding this so-called Lehigh marketing plan, that was put out in November, 1930; what differences were there between that plan and the policy followed by the Alpha Company after the Lehigh plan was put out?

24680 A. The Alpha Company met the prices and adopted the plan that had been put out by the Lehigh Company with certain changes.

Q. I want to know what those changes were.

A. I have already testified that we made no attempt in any way to control the re-sale price.

Q. Was that different from the Alpha plan in that respect?

A. That is the Alpha plan I am talking about.

Q. I mean the Lehigh plan.

A. Yes, it was a little different from the Lehigh plan, quite different.

Q. Did the Alpha Company follow the Lehigh plan to

the extent of giving the dealer his compensation at the end of the year, like Lehigh did?

A. We did it at first, but we found out that a number of competitors were not doing that, so along about the end of January we made it available at once and deducted it from our invoices.

Q. Were dealers, prior to the Lehigh plan announcement, were they cutting their 10-cent margin?

A. Yes, generally speaking, they were, at that time.

Q. Were some manufacturers aiding and abetting the dealers in such cutting?

A. Well, I think it was—in some cases it was probably talked up by salesmen.

24691 Washington, D. C.
October 12, 1939.

24692 F. M. COOGAN thereupon resumed the stand and testified further as follows:

Cross-Examination (Continued) By Mr. Wooden:

24708 Q. In your mind, was there any relation between the Lehigh plan, marketing plan, and its reception in the trade, and the unsettled conditions in manufacturers' prices existing during 1931?

A. Well—the Lehigh plan, as I remember it, was put in in 1930, and I can't tell whether that had any effect on the price situation in 1931 or not. To my way of thinking, I don't think it did.

Q. The Lehigh plan was still in effect early in 1931, wasn't it?

A. In May, 1931. We were the last company to discontinue the Lehigh plan; we discontinued it on May 1st.

Q. The Lehigh plan was discontinued by all companies prior to that, other than your own; is that correct?

A. Yes, sir; we held onto it longer than anybody else.

Q. What then became the nature of the price relationship between the manufacturers and the dealers?

A. Well, so far as our own company is concerned, I don't know that there was any change in the price relationship between our dealers and our own company.

24709 Q. Were dealers' margins reduced as a result of the abandonment of the Lehigh plan?

A. Well, that, you would have to take the local situation, and analyze each local situation, if you wanted to get a correct answer to that. It did not enter upon the conditions in the local markets involved with those dealers.

Q. Was the custom or practice of providing the dealers with a definite margin discontinued?

A. Well, the dealer service payment was discontinued, yes.

Q. Was there then adopted any method of providing the dealer with a definite margin, or was he just left to take care of that himself?

A. He could set his own margin. He charged what price he wanted to.

Q. And prior to the Lehigh plan there was a margin provided of 10 cents, wasn't there?

A. Yes, but we have—you have already brought out very plainly that the margin of 10 cents—that the dealer did not, was not getting his 10 cents. He got much less than that, generally speaking.

Q. You mean he cut it, and split it with his customers?

A. Well, he didn't keep it all himself.

Q. You say you were forced—I believe on direct testimony you said that you were forced to discontinue the service plan represented in the Lehigh plan.

24710 A. (Witness makes no response.)

Q. Isn't it feasible to offset one unfavorable element with your customer by having another element that is favorable, or do you conceive that all elements must be the same by various competitors?

A. No, I only speak for our own customers, and our own company, and I don't think our competitors would allow us to have an advantage in any market. I think they would soon meet that competition.

Q. Was the differential or margin provided for the dealer recommended by the committee on Trade Relations of the Portland Cement Association, of which you were a member?

A. I have explained that the Committee on Trade Relations brought in a report as to what they thought constituted the best practices existing in the industry. That was one of the practices.

Q. What was one?

A. Well, I would want to see the report. I think that there was a certain dealer differential in the report, but I would like to see the report, if you want it positively.

Q. Well, I just merely—I thought your answer was a little ambiguous. It is all right now.

Was the definition of a regular legitimate dealer also formulated by the committee of the Portland Cement Association along between 1915 and 1919?

24711 A. Answering your question the way you put it, I would say no.

Q. Was any definition of a regular or recognized dealer formulated by that committee?

A. I would say no, again, to that question.

Q. Well, did that committee have anything to do with expressing the definition of a regular recognized or legitimate dealer?

A. I have told you that that committee got reports from different people as to what policies and practices they were following, and included in that was the definitions of a dealer being used by various companies and from that they picked what they thought was a—the best definition—and circulated it.

The Alpha Company themselves have had a definition of a dealer, since 1903.

Q. Has it differed from that expressed by the Portland Cement Association committee?

A. I don't know the words of the report of the Trade Relations Committee. We have had our own definition of a dealer for many years, and we make our own interpretations under that definition as to who is and who is not a dealer.

Q. Wherein, if at all, has your definition of a recognized regular or legitimate dealer differed from the definitions of the organized dealers' associations?

A. Oh, it differs in many ways in the different
24712 organizations. Of course, I don't know in detail what each dealer organization uses as a definition. In a great many cases, dealer organizations—one of the qualifications in many of the organizations is that they have membership in that organization. Now, of course, we paid no attention to that.

Q. Can you say wherein the Alpha Company's definition of a recognized dealer differs from the definition of any dealers' association?

A. You would have to show me the definitions of the different dealers' associations and also my own, and then I would compare it. And I have told you that some associ-

ations make it as one of the requisites membership in that association. Of course, we pay no attention to it.

Q. As I recall your direct testimony on one point, you said that there were different classifications of consumer business or dealer business in effect at the same time, and then you said that that couldn't be so. Is that fair? In other words, you corrected yourself to that extent, is that right?

A. Well, I would like to read my testimony before I would make any statement as to it.

Q. I will ask you whether or not it hasn't been a fact that the classifications of consumer business, dealer business, in different parts of the country have been different depending upon the position of the dealers' associations in particular sections of the country?

24713 A. Not in our own company where we do business, and, of course, I can't answer for the rest of the country.

Q. Since some dealers, as I understand it, praised and approved the Lehigh marketing plan and others didn't, why couldn't you continue it so far as those who liked it and not use it so far as those who didn't like it?

A. I think the majority were opposed to it. By far the majority were opposed to it.

Q. Still, does it have to go by majorities? Couldn't you use the Lehigh plan for those dealers that liked it?

A. Now, Mr. Wooden, I don't think you seriously think that we could do such a thing. Now, if you will just take the trouble to—

Trial Examiner Norwood: Well, that wasn't the question. He is asking whether it could or whether it couldn't.

The Witness: Well, it can't. It couldn't be.

By Mr. Wooden:

Q. Will you explain?

A. If we used—if we continued to use the Lehigh plan, our price to our dealers in view of the dealer discount of five cents would make our price there five cents higher than our competitors would probably be quoting, and the dealer wouldn't get the five cents until the end of the year. Now, he would buy from the man that was

24714 quoting the lowest price. In other words, we wouldn't be meeting the lowest price at that destination.

Q. In other words, the dealer wouldn't continue to like the Lehigh plan under these conditions? That is what it amounts to?

A. Well; he couldn't and continue in business.

Q. I think that explains it very nicely.

Are there any cases that you can recall other than the Tygart River bid where the Alpha Company made the Government a lower price than the commercial price?

A. Would you specify the time?

Q. Oh, well, I would say since 1933.

A. Until the present time?

Q. Yes.

A. I think there have been a few occasions in 1938.

Q. What were those?

A. Because in some cases we found the lower prices and we met those prices.

Q. In other words, you didn't initiate the lower price, yourself?

A. No, sir.

Q. As you did in the case of the Tygart River?

A. No, sir; we did not.

Q. After the Alpha Company put out its announcements of policy regarding classification of business
24715 in April, 1935, can you say what substantial differences there were between that policy and the Article XI of the Code which was suspended?

A. Not unless you put the two together and read them off. I wouldn't attempt to tell you offhand the differences.

Q. Wasn't the policy announced by Alpha Company in April, 1935, in substantial conformance to the provisions of Article XI of the Code which was suspended?

24716 A. I should say no to that. There were substantial differences.

By Mr. Wooden:

Q. Can you relate what the substantial differences were?

A. No, I can't tell you offhand. I wouldn't attempt to recite them unless you give me the two together to compare.

Q. But you are quite sure that there are substantial differences, are you?

Mr. Leisure: I object to that. They are in evidence and we can compare them.

Trial Examiner Norwood: Objection overruled.

A. Well, I know in the Code that there was no mention of the emergency relief, because that had not come into existence when the Code was prepared. Now, that is a substantial difference; others, I don't remember.

24717 Q. In bidding for the dealers' account on emergency relief purchases, you ship direct, do you not?

A. We ship in accordance with instructions that we get from the dealer.

Q. When it is in carload lots, don't you ship direct to the job, or as near to it as you can get?

A. We ship in any way that the purchaser tells us to do.

Q. Isn't it usual for the dealer to tell you to ship it direct, when it is in carload lots?

A. No, sir; it is not usual. He very often takes 24718 it because there is a delivery involved which he performs, and he very often takes it to his own yard or warehouse, so I wouldn't say it was usual either one way or the other.

Q. Aren't there many instances where the dealer does not handle physically the cement at all?

A. There are some instances.

Q. Aren't they rather numerous?

A. I have never counted them.

Q. What dealer service is rendered in such cases?

A. I told you. I never counted those.

Q. I didn't ask you for the number. I passed that and wanted to know what service is rendered to the dealer in such cases?

A. Well, will you state the cases?

Trial Examiner Norwood: Well, now, he has asked you if that isn't sometimes done, and you have said that it was. Now he is asking just what services are rendered to the purchaser in those cases. Answer that if you know it.

A. Well, the dealer takes care of the credit, he pays for the cement, he maintains his yard and equipment, and—

By Mr. Wooden:

Q. I am talking about—

A. And he is there to perform any service that is required. What service he performs, I don't know.

24719 Q. I am talking about your shipments for federal emergency relief jobs. There isn't any question of credit there that the dealer takes care of, is there?

A. No, but that is not—that is a class of business that our company does not quote directly on. We quote that business through the dealer in line with our printed policy.

Q. I am asking what service the dealer renders when you ship direct on such things to federal emergency relief agencies?

A. Well, you have to say whether you ship direct—what do you mean—the site of the work?

Q. Yes.

A. That is always—or usually—in many cases a delivery involved, and we certainly can't differentiate and find out whether this car is to be delivered by truck, or whether it is to be taken from the railroad siding by the emergency relief. We have got to have some method of doing business, and that's the method we decided was the best for our company to pursue.

Q. Well, the emergency relief purchases are frequently delivered and taken directly out of a car at the job site, are they not?

A. Perhaps sometimes, yes.

Q. And you nevertheless require that such purchases be handled through the dealer?

A. We do.

24721 Q. Can you say whether or not, Mr. Coogan, in putting out your announcement of policy to the dealers in April, 1935, you simply copied the announcements put out by any other company?

A. In a general way, we followed the announcements which we found in the field.

Q. Can you say whether or not you just copied them?

A. No.

Q. Or any of them?

A. We didn't just copy them, but we took the best out all that we found, and put them out.

Q. During the last three years what percentage of the Alpha Company's business has been with dealers?

A. Without having the figures before me, I should say the average for the past three years probably has been from 75 to 80 percent.

Q. I believe you said that you were—between your

February announcement in 1935 and your April announcement—that you were besieged by dealers to broaden the February announcement,—is that correct?

A. That's correct. That was particularly true in the Middle Western section.

Q. Were you besieged by dealers' associations?

A. Our company don't deal with dealers' asso-
24722 ciations; we deal only with our own customers.

Q. Did any dealers' associations take that matter up with you?

A. I don't know. They might have sent in some letters mentioning it, but if they did there was no reply made to them.

Q. Was your April announcement more favorable to the dealers than the February announcement?

A. It was a little more favorable.

Q. In what respect?

A. There, again, I think you should put the two together and let me—as I remember it, it was just one or two. I think one of them was that the April policy provided for sale to large concrete manufacturers, and I think it provided for the sale of bridges through dealers. I don't know whether there were any other differences or not.

24727 Q. Mr. Coogan, I believe you said a few minutes ago that you didn't know what the dealers' associations wanted in the way of what classes of trade should be sold direct.

A. I didn't say that.

Q. I thought you did. What was it, then?

Has it been your experience that dealers' associations have been modest or reluctant in making known their wishes regarding such matters?

A. No, sir; not at all. They make known their wishes very freely.

Q. Have you dealt with officers of dealers' associations wherein such dealings you found out what they wanted?

A. I have not dealt with the officers of such associations. I have had very little or no contact with the officers of those associations. Once in a while I might meet one of them in a personal way, but as far as meetings is concerned, no. Now, we do get letters from them.

24728 Q. Do you recall what concern it was in Cleve-

land, Ohio, that you had some differences of opinion with as to whether they should be recognized as a dealer in 1936?

A. Yes, sir; I do.

Q. What was it?

A. Karcher Coal & Supply Company.

Q. Did you continue and have you continued to recognize them as dealers ever since?

A. We have been selling them as dealers for some time; I don't know just how long.

Q. I mean, have you continued to sell them as a dealer since 1936?

A. We discontinued selling them.

Q. When?

A. I don't know the date.

Q. Did other cement manufacturers discontinue selling them at the same time?

A. No, sir; I think some other cement manufacturers continued to sell them.

Q. Did you consider that that concern didn't qualify as a dealer under your announced selling policy?

A. Now; I never said whether they were dealers or not. There is some question as to whether they were or not. We felt that the Alpha Company might get more business in Cleveland by confining their sales to other people.

24729 Q. To other people who wanted you to quit selling that concern?

A. I didn't talk to the other people in Cleveland about what they wanted. There was some correspondence that came to my office from—I think it was Mr. MacQueen.

Q. In that connection, I am referring to Commission's Exhibit 867-7-T and 7-U, and on 7-U is a statement that that is a letter to you from Mr. MacQueen. There is a statement that some other company had sold that concern that you named using as their excuse the fact that Alpha had previously opened the account. What other cement company was that?

A. I don't know, and, of course, I am not answering as to the correctness of Mr. MacQueen's statements in this letter. I don't think there was ever any reply except quite an informal reply made to that letter to Mr. MacQueen, in which I refused to discuss the matter with him in that way.

Q. Did you ever meet with Mr. MacQueen to discuss that matter?

A. No, sir; I never did.

Q. How long after this letter of November 24, 1936, Exhibit 867-7-T and 7-U, was it that you discontinued selling the Cleveland concern that you named?

A. Why, you are misstating that because we had discontinued before we received that letter.

Q. Do you mean to say that Mr. MacQueen was asking you to discontinue doing what you had already discontinued doing?

A. Oh, no. Now, if you read that letter, I think you will find that—and this has nothing to do with Mr. MacQueen's request asking us to discontinue that. This is the aftermath entirely.

Q. Well, this concern that is not named here in Cleveland, you named the concern that is the subject of that reference there in that letter, didn't you?

A. Yes, sir. Yes, sir.

Q. Wasn't Mr. MacQueen asking you to discontinue recognizing that concern as a dealer?

A. Well, my memory is that at the time this correspondence came, the letter that you now show me, that the Afuba Company had discontinued selling this party. I am not—

Q. Well, if that is the case how do you account for your letter of January 25 to Mr. MacQueen, January 25, 1937, acknowledging his and saying that you were going to have a personal interview or suggesting a personal interview about it?

A. It refers to the letter which our secretary wrote to some of our dealer connections about Mr. MacQueen being plain rotten, and I didn't want to continue such a correspondence. I thought it was perhaps wise to take it up personally.

Q. Well, that is this reference here in Commission's Exhibit 867-7-U, where Mr. MacQueen says: "My 24731 efforts instead of being plain rotten as Mr. Gerstell characterized them were entirely well intentioned." Mr. Gerstell was your company official, was he not?

A. Yes, he is.

Q. Well, now, don't you think, Mr. Coogan, that you are in error in stating that you had already discontinued selling this concern, in view of those two letters there?

A. Before the date of my letter we had discontinued selling that concern.

Q. And subsequent to the date of Mr. MacQueen's letter?

A. No, my memory, without looking at my records, my memory would be at the time we received this MacQueen service, or letter, that we had discontinued.

There is other correspondence which this letter refers to. (Witness examines exhibit.)

This letter of Mr. MacQueen's refers to a reply which Mr. Gerstell had made to some other dealers who had probably written us at the instance of Mr. MacQueen.

Q. Well, your letter to Mr. MacQueen on January 25th says that you had been holding on your desk his letter of November 24th, and then you said you thought the most satisfactory way of reaching a perfect understanding on this question would be by personal interview rather than an attempt to handle it by correspondence.

Do I understand—will you tell me whether or not 24732 between Mr. MacQueen's letter of November 24th and your letter of January 25th you discontinued selling that concern in Cleveland?

A. My memory is that we discontinued selling them prior to the date of Mr. MacQueen's letter.

Q. Wherein he had asked you to discontinue; in other words—

Mr. Leisure: (Interposing): Your Honor, the letter speaks for itself.

Mr. Wooden: Oh, no.

Trial Examiner Norwood: I think he may question him on it.

Mr. Leisure: Furthermore, the whole topic of the cross-examination—

Trial Examiner Norwood: He may bring this out.

By Mr. Wooden:

Q. I am asking you whether—

Mr. Leisure (Interposing): Wait a moment, Mr. Wooden. I am stating an objection.

The entire topic of this cross-examination is outside the realm of the complaint.

Mr. Wooden: Oh, no, no.

Trial Examiner Norwood: Well, there is an allegation as to agreement as to selling certain dealers, and not selling others.

The objection is overruled.

24733 By Mr. Wooden:

Q. Do you mean to tell me, Mr. Coogan, that you had discontinued selling this concern before Mr. MacQueen wrote you on November 24th asking you to discontinue selling them?

A. I fail to see whether Mr. MacQueen asked "you" to discontinue in that letter.

Q. Well, read the paragraph beginning at the bottom of the first page and the top of the second.

(Witness examines document.)

A. All right.

Q. Don't you consider—

A. No, sir.

Q. —that an argument why you should not continue to sell them?

A. It may be an argument, but it is not a request.

Q. All right; all right.

Have you received from various dealers' associations, from time to time, lists of dealers which they considered should be recognized as regular and legitimate dealers?

A. Yes, sir; we have, and we have paid no attention to them whatever.

Q. At the time of this correspondence that you had with Mr. MacQueen, represented by Commission's Exhibits 867-7-S, T, and U,—you knew Mr. MacQueen, didn't you, as being the representative of various dealers' associations?

24734 A. Yes, I knew Mr. MacQueen was with—I think the Pittsburgh Alliance, as I remember it, or some such concern as that.

Q. Didn't you know at that time that Mr. MacQueen had represented the dealers along with representatives of The Cement Institute in appearances before the Procurement Division of the Treasury?

A. I didn't know that Mr. MacQueen was in those meetings.

Q. Didn't you get copies of the reports made about such meetings, as a member of the Trade Practice Committee?

A. Well, I don't remember. I don't remember whether I got any or not. I never paid any attention to Mr. MacQueen on there, because I didn't—

Q. Now, I believe you have said that you have never been reported to, or award of any agreement or under-

standing, between cement manufacturers and dealers regarding trade practices and policies?

A. That is correct.

Q. (Indicating) I am showing you Commission's Exhibit 102200, a telegram from Mr. Reiter to Coy Burnett of the Monolith Company, on December 3, 1935, in which he says:

"Regarding sales to dealers for destinations where they did not operate yards, we have discussed sales with Government by dealers at other dealers' destinations with officers of both national dealers' associations and several State dealers' associations, and all agree with us
24735 that this is bad practice leading to destruction of dealers' business and direct selling by manufacturers not contemplated by cement companies' policies or desired by dealers."

Was that true as regards your company about that being not contemplated by your policy?

A. We had had that—we did not supply dealers in other than their own towns prior to the date of this telegram, and naturally, when such a telegram came in, I evidently paid little or no attention to it because our polic was already fixed.

Q. A copy of that telegram was sent to you at the time?

A. It is so stated on here. I have no recollection of getting it, but, as I have said, we never changed our policy, and we had had such a policy in effect for many years prior.

Q. (Indicating) I am showing you Commission's Exhibit 1021-A, a circular from Mr. Rader, Chairman of the Code Authority, to all members of the industry, June 8, 1934.

Did you receive a copy of that at the time?

A. Yes, sir.

Q. Do you consider the statement there that the National Federation of Builders' Supply Associations had accepted this proposed amendment of Article XI—

A. The meetings referred to in that were held under instructions and under the guidance of the N. R. A.

Q. Do you agree with the statement that the National Federation of Builders' Supply Associations had
24736 accepted the proposed Article XI?

A. I don't know whether they ever accepted. I stated that that meeting and that statement there had to

do with the Code period, and that meeting was held under instructions and under the guidance of the N. R. A.

Q. This telegram of Mr. Reiter I showed you a moment ago, wasn't that December 3, 1935?

A. Yes, sir; and I told you that we paid no attention to it because that had been our policy for many years prior to the date of that telegram.

Q. Mr. Reiter says in Exhibit 1021-A that this new Article XI has been approved by the trustees for the industry. What do you understand by "trustees for the industry"?

A. Why, the trustees of the Institute represented the industry, and the industry was supposed to prepare the Code.

Q. Did you receive any notice or communication from Mr. Reiter describing the attendance of various representatives of manufacturers and dealers at conferences with the Procurement Division in July, 1935?

A. Well, I have a recollection of receiving from Mr. Reiter some correspondence relative to meetings, but my memory indicates that those were the meetings that I referred to as being held with the dealers and the representatives of the dealer associations under the guidance of the N. R. A.

Q. Now, this was in July, 1935, after the N. R. A. 24737 was out. Wasn't the Trade Practice of the Institute, of which you were a member, appointed by the Institute's president as a committee on Government purchases?

A. They were appointed as a Trade Practice Committee. I don't think it ever specified Government purchases or anything else, as I remember it.

Q. Showing you Commission's Exhibit 1022-N, a circular of the Institute dated July 10, 1935, does it refresh your mind on that point; the statement here that the president subsequently designated as "this committee" meaning the committee on purchases of cement by the U. S. Government the members who comprised the Trade Practice Committee?

A. Well, that was—that is what this letter so states. I never attended a single meeting with the Procurement Division or with representatives of dealers' associations.

Q. Did you get communications describing the results of those conferences?

A. I got communications from the secretary of the Institute, or general manager.

Q. Were you aware that a Mr. Mehren, E. J. Mehren—do you know him?

A. Yes, I have known Mr. Mehren.

Q. Who is he?

A. He was formerly at one time president of the Portland Cement Association, but he has been out of
24738 that for several years. I don't know what he is doing now.

Q. Did you know him in 1935 as being connected with the Portland Cement Association?

A. I think he was at that time.

24748 Q. (Indicating) Showing you, Mr. Coogan, a paper that has been marked for identification as Commission's Exhibit 415-542, being a telegram from Mr. Mehren to Mr. Reiter on July 10, 1935, was not the Alpha Company's announced policy, in conformance with what Mr. Mehren there says, a policy of direct and dealer selling agreed on subsequently with dealers,—subsequent to the Code, that is?

Mr. Werle: It does not say "subsequent to the Code," Mr. Wooden. It says "subsequently."

24749 Mr. Wooden: Well, it refers to the Code just before that, and then says "subsequently."

A. Well, this is a telegram from Mr. Mehren to Mr. Reiter. Now, the only thing I know is just what the telegram says.

By Mr. Wooden:

Q. Well, my question was directed to the policy of the Alpha Company.

A. It was not.

24750 Q. Well, generally, hasn't the trend been towards selling more and more through dealers and less and less classes of trade directly?

A. Exactly the opposite. There has been a very great trend toward direct selling, which is evidenced by the fact that our proportion of shipments through dealers is becoming less year by year.

Q. Well, that is the problem of your business, but I am talking about the classes of business, the classes of trade—aren't you selling more classes of trade through dealers now than you formerly did?

A. No, many less.

24755 Q. Didn't the dealers who were not in a posi-

tion to use trucking complain because the dealers who did use trucking were cutting prices?

A. Many of our dealers did not want to truck and wouldn't truck, and some of our other dealers hired boot-leg truckers, and they did at times invade the other man's market.

Q. And in invading the other man's market, they did it at a lower price?

A. They went in and took business in the other man's market. How they got it, I don't know.

Q. Well, then, some dealers favored truck and others were opposed to it, isn't that the situation?

A. Many more were opposed to it than favored it.

Q. And the ones who favored it were invading the other man's market, as you say?

A. I didn't say that. I said in some cases. Now,
24756 you include everybody.

Q. I see.

Wasn't the consumer getting the benefit of that truck transportation in the form of a lower price from the dealers who were using it?

A. I told you I knew nothing about the dealers' resale prices. We don't attempt to control them or keep any particular close watch on them. In a general way we know the dealer conditions, and that is about all.

Q. Referring to Respondents' Exhibit 703, which gives the shipments by truck from your various mills, why were those put in the form of tons rather than barrels, and will tell us what the barrel equivalents are of those figures?

A. That is put in tons because that is the way we keep our traffice records; all through the traffic department in our dealings with the railroads and other carriers, our unit is a ton.

Q. Will you translate a ton into barrels?

A. A ton is approximately five barrels. Now, that five barrels is 1,900 pounds, and in speaking, why, we call five barrels one ton.

Q. It appears, then, from your Jamesville mill, in 1929, your truck shipments amounted to approximately 240,000 barrels; doesn't it?

A. In 1929 a little more than that. I would say
24757 about 260,000.

Q. That was a very substantial portion of your Jamesville mill's output, wasn't it?

A. It was that year, yes.

Q. Were all the mills in that Jamesville territory trucking?

A. Now, what is the Jamesville territory?

Q. Well, I am not very clear, myself.

A. All right.

Q. But you can, no doubt, make it clear.

A. Well, I couldn't.

Q. How about Buffalo and Portland's Point?

A. I think that those mills were trucking at or about that time.

Q. Why is it that your mills at LaSalle and Phoenixville showed no trucking shipments on this exhibit?

A. Can I see that, please?

(The exhibit referred to was handed to the witness by Mr. Wooden.)

A. Well, according to our record, we made no shipment from there by truck. There might have been an occasional little shipment, but there were practically no shipments from there.

Q. Well, does that mean that in that territory trucking was not used by other mills, or what inference can be drawn from it?

A. It means that we never used it.

24758 Q. Yes, I know that, but does it—

A. That is the only inference I can draw.

Q. Well, what I mean is to ask, Mr. Coogan, whether or not the fact that you made no truck shipments at LaSalle or Phoenixville in four years while you were

24759 making truck shipments at your other mills means, coupled with your own opposition to trucking—that that doesn't mean that other mills in LaSalle and Phoenixville area were not engaging in trucking?

A. From that statement I should say that we found competitive conditions made it unnecessary for us to go to trucking.

Q. That is what I meant.

Trial Examiner Norwood: Were there any other conditions at that mill that rendered trucking less desirable?

The Witness: There was never any demand for it on the part of our customers.

By Mr. Wooden:

Q. How do you account for the large quantity of trucking from your Jamesville mill as compared to the

number of your customers who used it? Was that quantity of 240,000 barrels, or thereabouts, in 1929 sold only to a few dealers?

A. Oh, I wouldn't know how many dealers that was sold to.

Q. Well, it just raises a question with that large quantity, how many dealers wanted trucking enough to get 240,000 barrels in a year. That indicates to me—I will leave it to you. Go ahead. —either there was a large number or some of the big ones.

A. Well, some of the big ones did. I wouldn't say anything about the number, because I don't know,
24760 but there were several large customers during that time that did truck fair-sized quantities of cement.

24761 Q. Mr. Coogan, I referred this morning to what I thought was your testimony regarding the business handled through emergency relief agencies being small business, comparatively small business, and you did not believe you had said anything like that.

Referring to page 23601, lines 15 and 16, didn't you say there that a great deal of that business was handled within city limits and a great deal more is handled in small lots (handing official record to the witness)?

A. I did.

Mr. Werle: I object to that question, Your Honor, because the question this morning was not that it was business in small lots; the question was whether the emergency relief work represented a very small amount of their business.

Mr. Wooden: Oh, no.

24762 Mr. Werle: An entirely different question.

Mr. Wooden: Oh, no, that was not my question.

Trial Examiner Norwood: He is asking another question.

Mr. Werle: And making it appear that the witness' answer this morning was incorrect.

Mr. Wooden: But I do not think I asked the question that you say I asked this morning, and I did not intend to, if I did.

The Witness: Well, now, may I have something to say?

Trial Examiner Norwood: Wait a moment.

The objection is overruled.

Read the question.

(Question read.)
(Answer read.)
The Witness: But I want to add something to that.
Trial Examiner Norwood: Go ahead.
The Witness: Your question this morning was as to the total purchases of the emergency relief—

By Mr. Wooden:

Q. No.

A. —organizations, and did not refer to the statement which I previously made in my testimony.

Q. You may have understood it that way, but
24763 I did not intend it that way.

A. That's the way it was stated.

Q. And it is all cleared now, anyway.

And my further question would be, was not a great deal of that emergency relief business handled in lots that were larger than some of the lots you sold to your regular trade?

A. Well, of course, we sold only in carload lots to any class of trade. Some of that business consisted of more than one car load, and many of our dealers use more than one carload.

Q. And wasn't it frequently the case that the emergency relief business ran into more carloads than you sold to your dealers at one time?

A. Why, no. We sold to some dealers many more carloads than the emergency relief shipments.

Q. And, on the other hand, didn't you sell emergency relief business in carload quantities that exceeded the quantities you were selling to dealers?

A. To some dealers, yes.

Q. Yes.

A. And to some dealers, no.

Q. Now, just before the noon recess I asked you the question, or, rather, I referred to your testimony about not being able to add 15 cents to the Jamesville mill
24764 price without making Jamesville a base. Do you remember that direct testimony?

A. Yes, I think I do.

Q. Would the adding of 15 cents to the Jamesville price have interfered in any way with the Hudson Valley base differential over the Lehigh Valley?

A. I don't see how that would have any connection with it at all.

Q. Well, then, why was it that you couldn't add 15 cents to the Jamesville price without making it a base?

A. We had no base figure at Jamesville. What would we add it to?

Q. Couldn't you have added it to your mill net at each place where you sold?

A. I suppose we could do that if we wanted to do a lot of bookkeeping, but it is certainly not a very practical way of doing it.

Q. Did the amount of trucking done show a decrease after the installation of this 15 cents' charge?

A. Well, I don't have the figures. I think the figures are shown on that exhibit which I put in.

Q. Would you say that, for instance, the dropping at Jamestown from 54,000 tons in 1930 to 27,000 or 28,000 in 1931 had some relation to the 15 cents' charge?

A. You will notice the total shipments fell down 24765 very noticeably, too, in those years.

Q. Yes.

A. I should say almost in the same proportion. The fact is that during the first year or two there you would find that Onondaga County had a fairly large program, and that is the county in which our mill is located, and I think that accounts for some of those shipments, but the falling off in general shipments seems to have kept pace with the falling off in truck shipments.

Q. It wasn't in the same proportion, though?

A. Not exactly, no.

Q. The total shipments fell from 73,000 tons in '29 to 54,000 in 1931, while your truck shipments fell from 59,000 to 27,000, 28,000. In other words, your trucking decreased more than half.

A. Of course, you would have to ask our customers why they didn't do that. I don't know.

Q. Well, you put on the 15-cent charge in 1931, didn't you?

A. I don't remember when we put it on. I think I put it in evidence in my direct testimony, in documentary form.

Q. Do I understand that you make some deliveries from some of your mills at the present time in your own trucks?

A. We make deliveries from our Jamesville mill into the territory where we find trucking competition, but we do it in trucks hired by us.

24766 Q. Even there you use the rail delivered price?

A. We quote the same price that we quote delivered by rail.

Q. Are there some competitive mills that hire their own trucks for such delivery?

A. Competitive mills that hire their own trucks? Why, they wouldn't hire them if they were their own trucks. I don't see what you mean by that.

Q. Leave out the word "own"—hire trucks for delivery such as you do.

A. Well, I know some of them do. I wouldn't speak for all.

Q. Why don't the objections to truck delivery that you have mentioned apply to such use of trucks?

A. It does as far as we are concerned. We are doing it only to meet competition.

Q. Didn't truck delivery under the conditions of 1931 and 1932, and prior thereto,—didn't that interfere with the stability of delivered prices at the destinations where trucks were operating?

The Witness: May I have that question, please?

Trial Examiner Norwood: Read it.

(Last question read by Reporter.)

A. Well, of course, in that time we quoted only mill prices to trucks, and the people did their own trucking.

Now, we did have complaints from dealers who did not avail themselves of trucking, that they were meeting

24767 competition from other people who had come in their own markets, and made it impossible for the customers who were taking car delivery to compete with these bootleg truckers who were bringing cement into their markets.

Q. You mean customers taking car delivery, or dealers taking car delivery?

A. I mean dealers or customers of any kind.

Q. Didn't the delivery of cement to dealers' trucks at the mill, and the quoting of a mill price for such delivery, have the effect of allocating business to the mills that used such truck delivery and who had the advantage of location to the customer?

A. That depended on whether the other man came in

that territory with truck deliveries or not. Of course, if one mill delivered by truck and somebody else didn't meet that competition, that did give them an advantage.

Q. Well, didn't it tend to prevent so many mills sharing in the business at particular localities where truck delivery was operating?

A. That would depend entirely upon the locality, the location of the mills, and the market served.

Q. Didn't it cut some mills out of certain territory because of the lack of truck delivery used by them?

A. Well, I don't know where other mills shipped their stuff to, but I do, so far as the market served by us,
24768 I do know that the other mills continued to ship in that market notwithstanding the fact that we were trucking.

Q. Well, you could not add this 15 cents per barrel charge for truck delivery, could you, in the face of competitors who were not adding it, or who were adding less than 15 cents?

A. Oh, we would not be meeting the lowest price if we tried to add more to our price than our competitors added.

Q. If one mill continued on the basis of having no extra charge for truck delivery at the mill for even a period of 30 days, how could the other mills have put in a 15-cent charge?

A. Such a condition could not exist for 30 days, probably not 30 minutes.

Q. Do you mean that a mill could not continue to impose no charge for truck delivery when its competitors were imposing a 15-cent charge?

A. Don't you suppose their competitors would meet that competition?

Q. Well, they had been meeting it, hadn't they, before the 15-cent charge was put in effect? Hadn't they been meeting it?

A. Well, I don't understand you—I don't understand your question.

Q. You said that it couldn't last 15 minutes because they would meet it, and I said they had been meeting it prior to the imposition of the 15-cent charge, hadn't they?

24769 A. Why, certainly, I think that proves my answer, that they meet it all the time, whether it is 15 cents, 5 cents, nothing, or what it is.

Q. Do I understand that you hire some trucks for delivery notwithstanding that it costs you more to deliver that way than the rail delivery cost would be?

A. Yes, we do.

Q. Why do you take the more expensive method of delivery?

A. To meet the competition that is set up in those various markets by some of our competitors.

Q. In the way of truck delivery—

A. Yes.

Q. —you mean?

A. Yes.

Q. Well, if it is more expensive why don't you take the cheaper method of delivery, if rail is cheaper than truck delivery, why don't you use that?

A. Because we are competing with the man that's giving truck delivery, and if the customer wants the same delivery, why—and the other man will give it to him—if we want the business we have got to give it to him if he wants it.

Q. Isn't the question the advantage the truck has in delivering to the job site while the railroads frequently cannot do so?

A. That would depend entirely upon the job.

24770 There are other cases where the railroad has the advantage of going to the job site, and trucks cannot reach.

24774 Q. You spoke of giving retail distribution by truck from some of your warehouses. Did you mean by that, distribution to retailers or distribution to consumers?

A. I didn't mention anything about retail distribution from any place.

Q. In small truckloads?

A. I said in any sized truckloads, that the customer wanted to take it.

Q. Does it cost Alpha any less to load the trucks it hires for truck delivery than it did the trucks that came to it for loading from dealers?

24775 A. Oh, yes, somewhat less because you can control the trucks you hire, whereas the trucks that are sent to your mill, you have no control over those so you can't control the flow of supply in and out for the time of their arrival, or anything of that sort.

Q. Well, you said this 15-cent charge was—you wouldn't say that it covered your cost exactly, but it was what you thought you ought to have. How did it happen that you thought 15 cents was what you ought to have at the same time other mills thought 15 cents was what they ought to have?

A. They thought they could get it, probably.

24780 Q. Are there any instances in Alpha's experience where it nets more than its base price because of using water transportation instead of rail?

A. No, sir.

Q. You don't claim that rail transportation is usually cheaper than water, do you?

A. I claim that it is the cheapest form of transportation in existence.

Q. Is one of the reasons Alpha Company refused to sell dealers handling foreign cement because he was considered a competitor of the Alpha Company?

A. Why, that, among other things, was one of our reasons.

Q. Why wouldn't you refuse to sell a dealer who was handling another brand of domestic cement, by the same token?

A. Because it is an entirely different situation. A dealer handling foreign cement only tried to use our cement as a convenience, and to be used on places where he could not possibly substitute foreign cement.

Q. Well, isn't the other brand of domestic cement

24781 competitive with yours, just like the foreign cement is competitive?

A. Any brand of cement is acceptable—any domestic brand of cement is acceptable and freely interchangeable on any job.

By Mr. Wooden:

Q. And that applies to foreign cement, too, does it not?

A. No, sir; it doesn't. There are a great many jobs on which you cannot use foreign cement.

Q. Well, so far as the physical requirements of the job are concerned, or the technical requirements of the job, I thought you said there was substantially no difference between foreign cement quality—

A. I did.

Q. —and domestic cement?

A. I did. The Government, itself, has set up a differential on their work. A great many private owners refuse to allow it to be used on their work, and if it was on a job which requires test and setting aside in bins, certainly it cannot be used, so that it is not freely interchangeable as domestic brands are.

Q. But not because of the difference in quality?

24782 A. No, I shouldn't say that that's a reason.

Q. How much differential will private buyers stand for between domestic and foreign cement,—is it five or six cents, did you mention that figure?

Mr. Leisure: I object to that question—

The Witness: I think so.

Mr. Leisure: —how much will the buyers stand for.

A. I don't think you have ever found—

Trial Examiner Norwood: Wait a moment. I think the witness is acquainted with the facts of buyer preference and buyer reaction.

Mr. MacIntyre: The witness testified on direct how much the buyer would stand and how much he would not.

Trial Examiner Norwood: Yes; the objection is overruled.

A. I don't remember testifying on direct as to any amount. I don't think I did.

By Mr. Wooden:

Q. Did you mention the figure of five or six cents as being something that the private buyers would take into—

A. No.

Q. —account as representing a difference between what they were willing to pay for foreign and domestic cement?

A. No, sir.

Mr. Leisure: You are getting into the White Book put out by the Commission. This witness gave no such

24783 testimony.

The Witness: No, I never said any such thing.

Mr. Wooden: I will undertake to check.

The Witness: I talked about dealers; now you are talking about private buyers.

By Mr. Wooden:

Q. Well, all right, make it dealers, then. Dealers are private buyers, are they not? How much are dealers willing to stand for?

A. Well, I might have said that on direct testimony, although I doubt it, but I think that would vary in different places.

Q. Didn't you mention five or six cents a barrel as what dealers would stand for in the way of a differential between the two?

A. If I did say it, I would be willing to stand on it. It might be more or might be less than that, but that was my guess, if I said it.

Q. And, as I understood it, the Government put a 15-cent differential on, and then raised it to 35 percent; is that correct?

A. Yes, I think that's correct.

Q. How much more would that be than the private buyer was willing to stand for?

24784 A. That would depend entirely upon the price at which cement was selling; you would have to specify that.

By Mr. Wooden:

Q. Well, can't you take the price it was selling for over the last two or three years, three or four years, and say what that would amount to?

A. Well, where is the Government going to use this cement?

Q. Oh, in the area there where the arbitraries to offset foreign cement competition were in effect.

A. Well, in the areas—now, I think that is—

Q. Well, take New York City, then.

A. 15 per cent on the price at New York City would be approximately 25 cents a barrel.

Q. And 25 per cent—let me figure it out.

A. Yes.

Q. What was the base you used there?

A. That would be about 40 cents a barrel, the 25 percent, I am taking the delivered—our delivered price in that market.

Q. Did you ever know of any dealers or private 24785 buyers that were that liberal about it?

A. I know many dealers that never bought any foreign cement at any price.

Q. Do you know any that did buy foreign cement that would buy it at—that would refuse to buy it at that much of a differential?

A. Well, that is—

Mr. Leisure: I object to that question.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: I think that is a little too much speculation. Objection sustained.

You may ask him if they have done so.

By Mr. Wooden:

Q. Did the Alpha Company and other cement manufacturers request the Government to put on that 15 percent differential and later to increase it to 25 percent?

A. Not to my knowledge. I certainly had nothing to do with it. I don't know what was done, but I don't think that anybody in the industry ever had anything to do with it.

Q. When the so-called arbitraries in New York and Miami were discontinued—I believe July 7, 1938; is that correct?

A. Well, you put in—where, did you say?

Q. I say—I didn't finish the question, but I stopped to ask another one, whether that was the date.

24786 A. But you included Miami in there.

Q. Yes, I did.

A. I don't think Miami was in at that time at all.

Q. Did that come later?

A. Well, I am sure that it didn't come at that time. Whether it was ~~later or earlier~~, I don't know.

Q. What was the amount of the increase resulting from the discontinuance of those arbitraries?

A. Well, that was varying amounts at various places.

Q. Well, in New York City?

A. I think 22 cents now. It was either 22 or 27; I am not sure which.

Q. What was the maximum amount anywhere that you remember?

A. I think the maximum amount was in Boston.

Q. And how much?

A. I think it was probably 40 or 45 cents.

Q. Was there an increase in Florida later on?

A. Well, that, I don't remember. There was an increase in price in Florida but when it was I don't know.

Q. Was it subsequent, at any rate, to New York and Boston?

A. I didn't say so. I don't know.
Q. Well, I am asking you.
A. I don't know.
24787 Q. Were there some changes in conditions that made it feasible and practicable to get those increases at that time?
A. Our company found some other companies in the field with higher prices, and we took advantage of those prices and brought our prices up to that level.
Q. Was there some change in conditions of supply and demand at those markets?
24788 A. I have told you before that for the last several years our balance sheets had more influence on our—
Trial Examiner Norwood: Well, now, wait a minute. Read the question.
(Question read.)
Trial Examiner Norwood: Now, state whether there were or were not changes.
The Witness: Well, I don't know.
Trial Examiner Norwood: Yes. That answers it.
By Mr. Wooden:
Q. So far as you can now tell, the only reason you changed was because some competitor changed and thereby gave you the opportunity to change; is that right?
A. And add to that that our balance sheet indicated that we needed the money.
Q. Do I understand that that change was led by the Allentown Company?
A. Yes, sir.
Q. Did you ever know of that company leading an advance before?
A. There was also a reduction coupled with that; about 50 percent of the territory there were reductions in prices, so that I don't know that you would call that an advance.
Q. Well, I am talking about, of course, the territory where there was an advance.
24789 A. Well, of course, we had to quote in all the territory where there was an advance and where there was a reduction, because we covered all.
Q. Had you ever known the Allentown Company to lead an advance before?
A. I don't remember.
Q. Had you ever known it to lead a decline before?

A. I don't remember that they did.

I want to—you asked me that question yesterday about the Lawrence Company, about their '29 price. I remember in '26 that company did make a change in discount terms which brought about a general reduction in price.

Q. But not a change in the base price?

A. Yes, there was a change in the base price.

Q. Oh, you mean it brought about a change, a reduction in the base price, but they didn't themselves make the change in the base price?

A. They didn't make it themselves, no, not as of that time.

Q. Was the advance by Allentown in New York and Boston and other places accompanied simultaneously by a reduction initiated by the Allentown in other localities?

A. Yes, we found the quotations in the field on the same day.

Q. Did I understand that they put in a base at Swedeland?

A. Yes, sir.

24790 Q. What is the difference between having a base at Swedeland and having a base known as a Lehigh Valley base? Isn't Swedeland a part of the Lehigh Valley?

A. Not as far as freight rates are concerned, and it is not a part of the Lehigh Valley in any sense of the word.

Q. What territory did the Swedeland Base govern?

A. I can give you a few, but I don't—I couldn't recite them all.

Q. All right.

A. But understand, the Lehigh Valley base was reduced also.

Q. Yes.

A. So, of course, I don't know where one began and the other left off.

Q. I just want a little idea of how much territory this Swedeland base governed?

A. Well, it covers a fairly large territory. It covers all of the section of Pennsylvania, the outlying counties of Philadelphia; it goes down all through South Jersey, down into Delaware. It covers a fairly large territory.

Q. And is the Swedeland base the same as the Lehigh Valley base price?

A. No; the base figure that we are using there is 10 cents higher than the Lehigh Valley base.

Q. Have you used the expression on your direct testimony, "Normal net"?

24791 A. No, sir; I did not, not to the best of my memory.

Q. If I were to ask you whether Alpha Company has a normal net, what would you say?

A. I wouldn't know what it was.

Q. Do you mean you haven't any normal net?

A. I don't know what a normal net it.

Q. You don't have any?

A. Well, I can't tell you whether I have it or not when I don't know what it is even.

Q. You may not have what I or anyone else thinks is a normal net, but I am asking doesn't the Alpha Company know what a normal net is for, itself?

A. No, no, sir; I don't.

Q. All right.

You sent out your announcement to the trade concerning your intention to refuse dealers handling foreign cement on December 30, 1932, I believe; is that correct?

A. No, we never sent it out to the trade.

Q. Then I am wrong; you are right. I mean, you sent it to your own organization on that date?

A. Whatever date is shown on the exhibit that I put in.

Q. Were you the first one to reach such a conclusion outside of Lone Star?

A. I don't know.

Q. Were you even ahead of Lone Star in the
24792 New York market in adopting such a policy?

A. No, I am positive we were not.

Q. Did you know before you adopted your policy that Lone Star was putting in that policy in the New York area?

A. I don't know when they put it in in the New York market. I know that they had it in at the time that we put it in, and had had it in for some time previous to that.

Q. How long previous to it?

A. I don't know.

Q. Mr. Coogan, showing you Respondents' Exhibit 723, your adoption of the policy of not selling dealers handling foreign cement shown on there as December 30th, that is correct, is it (showing document to witness)?

A. That's correct, December 30, 1932.

Q. And in the circular you say that the importation of

foreign cement has long been a menace to the domestic manufacturers. Why is it that you had not taken the step prior to that time in meeting that menace by refusing to sell dealers handling foreign cement?

Mr. Leisure: What exhibit is that?

Mr. Wooden: 723.

4793 Mr. Leisure: Who wrote it?

The Witness: I did.

A. That is just a statement in there. I think if you would look at the importance of cement you will find that they became much more serious in 1932 than they were in 1931.

By Mr. Wooden:

Q. Well, although it had long been a menace, you took—you did not take this step until this particular date?

A. I said that just as a figure of speech, because unless I see the importations for the various years I wouldn't say that the menace had been very long.

Q. Were you unqualifiedly of the opinion that the Alpha Company should take this action which it took in this circular, Respondents' Exhibit 723?

4798 Q. You said, I believe, that the Portland Cement Manufacturers Association was disbanded in 1924, over your opposition. Is that correct,—or words to that effect? In other words

4799 A. Of course, you have got it mixed up. You said "Portland Cement Manufacturers Association." I don't think you mean that.

Q. Cement Manufacturers Protective Association is what I meant to say.

A. I don't think I said any such thing.

Q. You mean that it was disbanded in 1924?

A. No, but the other part that you said that it was abandoned over my protest.

Q. No, I said your opposition. You thought it ought to have been continued? That is what I should have said.

A. Yes, my attitude was that I thought it should be continued.

Q. Because it had been declared legal, I believe you said: is that right?

A. Yes, sir.

Q. So the declaration of legality to which you refer, was that of the Supreme Court in the old Cement Manufacturers' Protective Association case?

A. Well, that is what you are talking about, Cement Manufacturers' Protective Association all the way through, aren't you?

Q. Yes. But the declaration of the legality to which you refer, that was a Supreme Court decision in that case, wasn't it?

24806 A. Well, I don't want to get into a legal argument. Of course, I discussed that with our attorney.

Q. I am not trying to get into any legal argument; but just what you referred to when you said it had been declared legal.

A. I refer to what our counsel told me.

Q. You don't know where and when it had been declared legal, then?

A. Well, of course, I know about the Supreme Court decision; naturally, I do.

Q. The only point I am making, that was 1925, and you gave as a reason for not being agreeable to the disbanding of the Association in 1924 the point that it had then been declared legal.

A. Well, if I did, that was a mistake on my part. Of course, I felt sure that there could be no other decision.

Q. As a matter of fact, the lower court had held the other way, hadn't it?

A. Yes, sir; but we still have a Supreme Court.

Q. You don't mean to imply in any of your direct testimony that the holding or negotiation of a trade practice conference with the Federal Trade Commission was the only reason for the formation of The Cement Institute, do you?

A. In the minds of our company, that was the controlling reason.

Q. But not the only reason?

24801 A. I don't think we would have joined it at all if we hadn't had that in our minds.

Q. You rejoined in 1933, I believe?

A. Yes, sir.

24803 Q. Wasn't it proposed to get the Federal Trade Commission's approval of a code of ethics which the Institute formulated?

Mr. Werle: Are we still talking about 1935 now?

Mr. Wooden: No.

By Mr. Wooden:

Q. The code of ethics which the Institute formulated—I will make it more specific—in 1929 or 1930.

Mr. Leisure: Well, wasn't it hoped by whom, and for what purpose? Who are we talking about?

Mr. Wooden: Wasn't it hoped by the Alpha Company and its associates in The Cement Institute?

The Witness: Why, I told you that was our reason for joining the Institute in 1929, because we hoped that
24804 a trade practice conference would be arranged, and the code of ethics was prepared for the purpose of presenting to such conference.

By Mr. Wooden:

Q. Do you know whether any such presentation was made to the Federal Trade Commission, or anyone connected with it?

A. Not to my knowledge, it was discussed informally, I am quite sure, but—

24816 Q. Do you wish to say that you never called any meetings of competitors at which price cutting by competitors was discussed?

A. No, sir; I don't think I ever did.

Q. Are you quite sure about that?

A. Yes, I would say I would be quite sure about it.

Mr. Wooden: Will you mark this for identification?

(A document was thereupon marked for identification "Commission's Exhibit 3227-A and 3227-B.")

By Mr. Wooden:

Q. (Indicating.) Showing you Commission's Exhibit marked 3227-A and B, for identification, being a part of the certified record in the Cement Manufacturers
24817 Protective Association case, did you act as secretary to the meeting whose minutes purport to appear there?

Mr. Porter: For our information, will you state the date of that meeting, Mr. Wooden?

Mr. Wooden: November 19, 1915.

A. This shows that I acted as secretary of that meeting.

By Mr. Wooden:

Q. Do you say that the matter of cutting of prices was not discussed at that meeting?

A. I do, because it does not state anythere in there anything about price cutting.

Q. Didn't you call that meeting that is referred to in Commission's Exhibit 3227-A and B, for identification?

A. (Witness examines document.) This states here that I have arranged to meet some people.

24818 Trial Examiner Norwood: Do not read what is in there.

The Witness: Well—

By Mr. Wooden:

Q. Just use that to refresh your recollection as to whether you did not call the meeting that is referred to and mentioned in Commission's Exhibit 3227-A and B, for identification.

A. It don't look to me like any formal meeting. It looks like I met a few other people in Washington. At least there is no formal call for the meeting.

Q. Didn't you write to Mr. MacFarland saying that you had arranged to have a meeting on November 19, 1915, at the Raleigh Hotel in Washington?

A. No, sir; I did not.

Q. Do you know who Mr. MacFarland was in 1915?

A. Yes, I know who he was. I am not sure by whom he was employed at that time.

Q. Who was he with?

A. Why, I think he was with Universal-Atlas—or Atlas at that time.

Q. Weren't you acting secretary to meetings of competitors held from time to time back during 1915?

A. Why, I don't know that I was ever secretary. I might have acted as secretary at some of the meetings, but I never knew that I was appointed secretary.

24819 Q. Well, by reference to Exhibit 3227-A and B, for identification, wouldn't you say that you acted as secretary at that meeting?

A. I said that I evidently acted as secretary of that meeting at which price cutting is not mentioned.

Q. Do you now say that price cutting of the Tide Water Company in the Baltimore district was not discsused at that meeting?

A. All I can go by is the minutes that you showed me.

Q. I am not asking you to go altogether by those minutes.

A. I don't remember what happened outside of what was written at any meeting that happened in 1915.

Q. Didn't you have the Tide Water Company before a meeting of manufacturers about that time and discussed with them their cutting of prices?

Mr. Leisure: Now, if Your Honor pleases, we are getting very far afield here. This Tide Water Company is not a Respondent in this case, and we are now well into the old case of 1925 in this whole discussion. I don't think we ought to leave the issues in this case and take up another one.

Mr. MacIntyre: But, if Your Honor please, what difference would it make whether or not someone that was being abused by this cement manufacturer and his competitors was a Respondent or not? If they were after him
24820 for price cutting? It is certainly relevant and material.

Mr. Porter: The Supreme Court has said that what was done in that case was not illegal.

Trial Examiner Norwood: Well, I understand, but he is trying to contradict this witness in a previous statement he made about ever having attended meetings and discussed price cutting, or something like that.

Mr. MacIntyre: This witness has testified over and over again—

Trial Examiner Norwood: And he has a right to do that.

Mr. Porter: He has a right to ask him, but there is nothing in evidence that contradicts anything that the witness has said.

Trial Examiner Norwood: Well, he has a right to lay the grounds.

Mr. Wooden: I am laying a foundation.

Trial Examiner Norwood: Lay the ground for it. He can introduce the exhibit.

Mr. Porter: But the Counsel is stating things which are not in evidence as facts and saying those facts prove that he is right. Counsel has no right to do that.

Trial Examiner Norwood: I think he is asking him if that is a fact. He has a right to bring out the factual matter in that exhibit without introducing the exhibit.
24821 I mean, it is due to the witness to refresh his memory.

Mr. Porter: And if the witness doesn't remember, he can't go ahead and state that as a fact, which is what Counsel is doing.

Trial Examiner Norwood: No, he should introduce the exhibit.

Mr. Wooden: We will pass that.

Trial Examiner Norwood: Read that question.

(Question read.)

Trial Examiner Norwood: The objection is overruled.

A. I don't know who attended that meeting.

By Mr. Wooden:

Q. Do you wish to say that you did not have the Tide Water Company represented at that meeting and did not take them to task for cutting prices?

A. I don't know who was there.

24822 Trial Examiner Norwood: Now, either affirm or deny that. State that you do or do not know.

The Witness: Well, I don't know.

By Mr. Wooden:

Q. Do you think it is possible that that was the fact?

Mr. Porter: Now, Your Honor, that is objected to. "Is it possible?" The witness says he doesn't know. That ends it.

Mr. Wooden: Can't I find out the degree of his lack of knowledge?

Trial Examiner Norwood: I think so. I think that he can determine his degree of certitude or the lack thereof.

Mr. Porter: I know no way of measuring that.

Trial Examiner Norwood: This is cross-examination.

Mr. Porter: The witness says he doesn't know. That ends it. How much do you "don't know"?

Trial Examiner Norwood: "Well, do you know anything to the contrary?" You can ask him that.

Mr. Porter: Let him ask that.

Trial Examiner Norwood: Objection overruled.

The witness: May I have the question?

Trial Examiner Norwood: Read it.

(Question read.)

A. I don't know.

24823 —Cross-Examination by Mr. Wooden.

The witness identified Com. Ex. 3227 as purporting to be the minutes of a meeting at the Hotel Raleigh on
24824 November 19, 1915 and assumes that it is authentic; Com. Ex. 3228 A and B as a note which the witness sent to Mr. MacFarland inviting him to that meeting. The witness does not know whether it was sent to everybody or not.

"Q. You recognize it as a call issued by you for the meeting covered by Commission's Exhibit 3227-A and B, for identification?

A. I said I—

Mr. Leisure: The witness has just said he doesn't recognize it as a call, but he recognizes it as having invited Mr. MacFarland to the meeting. I don't see why we need to go over it again. I object to the question.

Trial Examiner Norwood: Read the question.

Mr. Porter: If you are going to read the question, you should have the previous question and answer also repeated.

Trial Examiner Norwood: Read the previous question and answer and then read this question.

(The last two questions and answers were read.)

Trial Examiner Norwood: Overruled.

Answer that question.

A. I recognize it as a note that I sent to Mr. MacFarland."

24825 (COM. EXS. 3227-A, 3227-B, 3228-A were offered and received in evidence.)

24827 Washington, D. C.,
October 13, 1939.

24828 F. M. COOGAN thereupon resumed the stand and testified further as follows:

Cross-Examination by Mr. Wooden (Continued).

Q. Mr. Coogan, referring to Commission's Exhibit 3227, is the Mr. Scott who is listed there as among those present,—was he the president of the Tide Water Company (showing document to witness)?

A. (Witness examines document) Yes, he was at that time.

Q. What was this great difficulty and misunderstanding between southern mills and those located in the Baltimore district and the Lehigh Valley?

A. I have no recollection what that was.

Q. Do you recall whether or not some time after this meeting that a base price was put in at Union-bridge where the Tide Water Company had a mill, the base price
24829 being put in by some mills in the Lehigh Valley?

A. I knew that there had been a base price established at Union-bridge, but from memory I don't know when, or don't know who put that base figure in.

Q. Was the Tide Water Company later taken over by the Lehigh Company, their mill at Union-bridge?

A. Yes, sir.

Q. Isn't this Mr. Young, who is shown as chairman of that meeting, in Commission's Exhibit 3227—isn't that Colonel Young of the Lehigh Company?

A. I presume it is. Of course, there are no initials given, but I don't remember any other Young in the business at about that time.

Mr. Leisure: If Your Honor pleases, I don't want to be captious, but I am not sure at all what the Counsel has in mind when he uses the language "taken over." I don't know whether he means the fact, as I understand it to be, that the mill was sold at auction and bought by Lehigh. If that is what he means, I have no objection to it, but if he is connecting it up with something else in the testimony and using the words "taken over" in any other sense, I think it ought to be made clear on the record.

Trial Examiner Norwood: Well, I think that term is well understood. There may be some particulars in
24830 connection with the taking over, that you—

Mr. Porter: I think, Your Honor—

Trial Examiner Norwood: —can bring out.

Mr. Porter: I think, Your Honor, that in Mr. Wooden's question, if my recollection is right, it was misinterpreted by Mr. Coogan. I think Mr. Wooden asked if the company was taken over and the Lehigh acquired the mill. Now, those are two entirely different things. I don't think Mr. Coogan meant to say that the Lehigh Company took over the Tide Water Company. My recollection is that it was an entirely different transaction. I think Mr. Wooden's question was misleading.

Mr. Wooden: Well, I realized before I got through that

it probably wasn't applicable to taking over the company; that is why I added "the mill." My question was really being confined to the acquisition of the mill.

Trial Examiner Norwood: Well, you answer it from that standpoint.

The Witness: Well, the Lehigh Company many years later bought the mill of the Tide Water Portland Cement Company at public auction held by the courts.

By Mr. Wooden:

Q. How much later was that?

A. Well, it was several years later; I wouldn't
24831 say the exact time.

Q. What did you have in mind when you said "many years"?

A. Well, if I had to guess, I would probably say along about 1922 to '23, or maybe later than that.

Q. Did the Tide Water Portland Cement Company protest to the Lehigh manufacturers about the putting in of a base at Union-bridge?

Mr. Leisure: Now, just one moment, please.

I want to call attention to the fact that we are going way beyond the direct in this examination. We are now getting further and further into the trial of the old Cement Case about matters that are not relevant to any of the issues in this case.

I object to it.

Mr. Wooden: Your Honor, this is just part of the process of impeachment of the witness' testimony about never having attended meetings at which price-cutting was discussed, and also touching his testimony about the imposition of bases at competitors' mills.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Porter: There is another objection. How can this witness know what happened to the Lehigh manufacturers? If the question were confined to a protest of this witness,—of this witness' company,—the witness might
24832 know, but the question is framed just altogether too broad.

Trial Examiner Norwood: He can tell that if it came to his knowledge.

Mr. Leisure: I object to it as calling for obvious hearsay.

Mr. MacIntyre: It so happens that this witness is a representative of one of the Lehigh Valley manufacturers. They overlook that fact.

Trial Examiner Norwood: I don't think you should prevent him from bringing that out. Objection overruled.

A. Well, so far as I am concerned, I don't remember receiving any protest from the Tide Water Company about a base at Union-bridge.

By Mr. Wooden:

Q. Showing you a paper marked "Commission's Exhibit 3229," for identification, Mr. Coogan, it being a photograph of what purports to be an original letter from B. T. Scott, the president of the Tide Water Portland Cement Company, dated January 25, 1917, and addressed to the manufacturers of Portland cement, Lehigh Valley
24833 district, Pennsylvania and New Jersey—did the Alpha Company receive a copy of that communication?

A. I never remember having seen such a communication.

Q. You wouldn't say that the Alpha Company did not receive it, but simply that you do not remember ever having seen it?

A. I would say, as far as my knowledge goes, they did not; but I would only say that I have never seen such a communication.

24839 Q. I understand that you were opposed to the issuance of the Compendium; is that correct?

A. Yes, I, personally, was opposed to it.

Q. And why?

A. Well, I just thought it was just useless and had no effect whatever, so I didn't think it was worth while to even publish it.

24840 Q. Do you receive copies in your office?

A. We received two copies. One came for the president of the company and one came to me, and upon receipt of it I wrote a note to our president and suggested that our company do not circulate it in our own organization, and that we simply keep the two copies that had been received by us and not let anybody else in our organization have a copy—which was done.

24844 Q. Were you a member of the N. R. A. Code committee on new plants?

A. Yes, sir.

24845 Q. Was any evidence ever presented to the president in connection with opposition to the erection of new plants?

A. Yes, in one case that I know of.

Q. What was that?

A. That was the National Portland Cement Company.

Q. Was it presented directly to the president or to N. R. A.?

A. I was not here when the presentation was made, and I don't know whether that was handled through the N. R. A. or direct to the President.

Q. Who appointed the committee on new plants, of which you were a member?

A. I don't remember who appointed it.

Q. Was there any proposed enlargement of existing plants that came to the attention of the committee?

A. No, none that I remember of.

Q. Did you testify, Mr. Coogan, that Alpha Company never sold to the Government at higher mill nets than commercial?

A. No, sir; I did not testify to that.

Q. What is the fact on that question?

A. I don't know that we ever sold them. At times when we had very low prices to meet imported competition, we quoted the Government a destination cost with the privilege of deducting the land-grant rate, and, in some cases, they might have netted our company a few cents more than if we had shipped on a commercial rate. Whether
24846 we ever got any business on that basis or not, I think in one case we did get a little business in the State of Florida.

24848 Q. With regard to Commission's Exhibit 192,—was your testimony that you did not feel able to compete with a certain competitor on the river—did that relate to the Marquette Company?

Mr. Wooden: I should say, was that competitor the Marquette Company?

Trial Examiner Norwood: Can you answer that without the exhibit?

24849 The Witness: If he refers to the case that I mentioned on direct examination, yes.

By Mr. Wooden:

Q. Well, I did.

A. Well, if you will read those specifications sent out

by the Government you could easily see that nobody could quote on it competitively except the Marquette Company.

Q. Was that because it was the only one located on water transportation?

A. Well, I would want to look at the inquiry of the Government, because it was—it is very involved; there is a great deal in that proposal that would have to be stated, if you wanted to get all the facts.

Q. (Indicating) I have here Commission's Exhibit 192. Will that serve to make your answer more certain?

A. (Witness examines document) No, it simply confirms my opinion that there must have been a great many other people that had the same opinion that we did, because there are very few bids on that particulr job.

Q. Only four bidders?

A. Yes, sir. The tabulation of the bids don't show all of the facts. I think that the proposal is the only one that would show that.

Q. When you say that the proposal was such that no company but Marquette Company—or other com-
24850 panies could not bid competitively with Marquette Company—

A. I said our company.

Q. Did you mean that you could not make as low a price as Marquette?

A. I told you that there is a great deal in that proposal; if you will look over the delivery conditions you would find out how impossible it would be for our company to quote on it.

24856 Q. Does the freight rate information on these customer cards sometimes as to a given card come only from the freight tariffs and as to other cards come only from the Institute freight books?

A. No, sir, it does not.

Q. Or do you mix them up so that each card has information from both places?

A. Yes, sir.

Q. The latter?

A. Yes, sir; each card has information from both places.

Q. Do I understand, Mr. Coogan, that each of these customers' cards contains freight rates that are taken from the tariffs, and then each card is checked with the Institute book?

A. No; I didn't say that. The Institute book is checked

with the tariffs in our traffic department, and kept up to date, and that information is passed on to the sales department to put on their cards. So I say that it is handled by both.

24863 Q. Referring to Respondents' Exhibit 771, how long after that did you continue to make the Government f.o.b. mill prices?

Mr. Porter: What is 771, please?

Mr. Wooden: It is the letter of Bethune—from Birmingham, of the Alpha Company, to the chief clerk at Easton, dated November 15, 1932.

A. Well, I can't say just how long. This was a case of trial and error. We were trying everything that we could to get some business, and that is our method of trying to get business.

By Mr. Wooden:

Q. Didn't you continue to quote the Government, a straight f.o.b. mill up until the N. R. A. Code period?

A. Well, if I have to answer from memory, I would say that I don't think we did. We might have quoted them but I doubt it.

Q. You were doing so as late as November, 1932, anyway, weren't you?

A. What was the date of that letter that you showed me?

Q. That was November.

A. Well, we did it in that case.

Q. (Indicating) Referring to Respondents' Exhibit 783, the customer's card covering Lewisburg, Pa.; did you explain the red pencil figure there, 40-cent zone?

24864 A. I did; that's our mortar cement.

Q. What are the headline points on that card, the abbreviations,—what are they for?

Trial Examiner Norwood: What card is that?

Mr. Wooden: It is 783, Respondents' Exhibit.

A. Lehigh Valley, Universal, Buffalo, Union-bridge, York, Portland Point, Cleveland—I can't figure that out; "L," I presume, stands for Limedale; "M," I presume, stands for Mitchell, but it might stand for any number of places. "PVL," I don't remember. "FUL" is Fultonham. The next is Valley Forge. And "E," I don't remember.

By Mr. Wooden:

Q. (Indicating.) Referring to Respondents' Exhibit 792, being a customer's card relating to Easton, Pa., it appears that the price quoted that customer was raised from $1.76 to $2.11 on July 29, 1932,—am I correct in that?

A. (Witness studies exhibit.) No, you are not correct in that. It was raised from $1.82 to $2.11.

Q. Was there a $1.76 before that?

A. There was at the time we were quoting trucking prices f.o.b. mill, and the $1.76 that you see there is the price that we quoted to that customer loaded on his trucks at the mill.

Q. What were the circumstances that led to that increase from $1.82 to $2.11 on July 29, 1932?

24865 A. I don't remember the circumstances, except we followed the prices which we found in the field, and we were very glad to follow them because we needed the money.

Q. Do you have on these customers' cards, Mr. Coogan, any headline points that were not basing points?

A. Oh, yes, there is a number of headline points on there that are not basing points.

Q. And never have been basing points, you mean?

A. Well, I would have to look at each card, if you want me to answer that.

Q. Take this 792, the one we were just talking about (indicating); are there any points on there that have not been basing points?

A. Well, I told you that two of them I don't know what the abbreviations are, so I can't answer your question. There are many on there that we never used in making up our delivered price at Easton, many of them.

Q. But all of those that you know about have been basing points, have they not?

A. Yes, I think so.

Q. Now, can you find any of the other customers' cards that contain headline points that are not basing points,—that have not been basing points?

A. Do you want me to look through all of them?

Q. Well, it is quite an undertaking. I won't ask you to.

24866 A. I should say.

Q. Do you have any cases in mind where you could turn to among them?

A. No, I would have to look at each card if you wanted the question answered exactly.

Q. Well, you have a lot of headline points on these customers' cards, do you not, at which the Alpha Company has no mill?

A. Oh, yes, there are some of them shown there where we have no mills.

24885 Q. Do you say that there has never been a time when there was any agreement or understanding concerning the allowances to be made on returned bags?

A. I do.

Q. Do you say there has never been a time when there was an agreement or understanding regarding the practice of quoting dealers for 15-day shipment?

A. I do.

24886 Q. Do you say there has never been a time when there was an agreement or understanding as to terms of sale or discounts?

A. You have already mentioned discounts. I presume you are excluding the Code period.

Q. Well, you can exclude it or say anything you like about it.

A. Of course, I am excluding that in all my answers.

Q. Yes.

A. No, sir.

Q. Your answer is the same with that exception as to the Code period?

A. Yes, sir.

Q. Do you say there has never been an agreement or understanding with regard to the charge of 15 cents for cement in paper bags?

A. I do.

Q. Do you say there has never been an agreement or understanding with regard to standard specifications as a means of establishing a uniform price or a standard price?

A. I most certainly do.

Q. You say there has never been an agreement or understanding with regard to quoting dealers for shipment within 30 days?

A. I do.

24887 Q. You say there has never been an agreement or understanding so far as you know with regard to middle western mills adopting the Lehigh base and adding freight from the Lehigh Valley to the Middle West?

A. I do.

Q. Do you say that no member of the Alpha Company or representative of the Alpha Company ever served on a price committee with other competitors?

A. I never knew of the existence of a price committee.

Q. A committee dealing with prices?

A. I never knew of such a committee.

Q. Do you say that no representative of the Alpha Company ever served on any committee having to do with prices and on which other competitors were represented?

A. I never knew there was such a committee.

Q. Wouldn't you have known it if any member of the Alpha Company had been on such a committee?

A. I should think so, during the time that I have been with the Alpha Company.

Q. You say that it has never been an agreement or understanding at any time that prices should be quoted on a delivered basis?

A. There has not.

Q. Do you say that there has never been an agreement or understanding at any time to the effect that 21888 freight should be paid by the buyer?

A. There has not.

Q. In making your various answers, do you also mean to say that there has not been any cooperation or working together by the Alpha Company on such subjects with competitors?

A. The Alpha Company always cooperates with competitors as far as they can along what we consider entirely proper lines.

Q. Would you say that such cooperation has not been for the purpose of obtaining uniformity in delivered prices, terms, methods of doing business?

A. No. We are always perfectly willing and have no objections to any prices, terms, or conditions anybody else makes as long—we do object to secret rebates and allowances, but if anybody wants to do it, it is all right.

Q. Hasn't the Alpha Company in such cooperation attempted to harmonize its policies and practices with those of its competitors?

A. No, sir. If we think the practice of our competitor after he brings it out is better than the practice which we are using, we would not hesitate to adopt it.

24890 F. M. COOGAN thereupon resumed the stand and testified further as follows:

Cross-Examination by Mr. Wooden (Continued).

24922 Q. You sometimes sell below cost in going into such territory of other base mills?

A. Well, that depends, again, on the conditions. It would depend whether those conditions existing in our markets usually served by our mill,—there may be a condition there which makes our price low, our mill net low,—and, as I said, Mr. Wooden, we consider each case, and I think you can't say how much you shrink except at the particular time, the particular market, and all of the conditions existing at the time you are asked to quote that price.

Q. Do you sometimes shrink to a point where you accept less than your total cost as distinguished from out-of-pocket cost?

A. Yes, I think there are such cases.

Q. You said that you ought to have 30 cents a barrel above your costs in order to come out—I don't know whether you said come out even or come out with a profit or what.

Mr. Porter: I object to the question because I don't think he said he ought to have it. He said he would like to get it. I don't think he said—

Trial Examiner Norwood: I think he said he figured it tentatively.

24923 Mr. Porter: And would like to get it.

Trial Examiner Norwood: Or words to that effect.

Mr. Wooden: What he would like to have.

Trial Examiner Norwood: But he did not always get it.

Mr. Wooden: On the average. I want to ask him about that. First finish up the question.

The Witness: What is the question?

Trial Examiner Norwood: Read it.

(Last question read by Reporter.)

Mr. Porter: I don't think he ever said that.

By Mr. Wooden:

Q. Well, now, was the 30 cents that you referred to in your testimony on that point, on an average basis, or was

it what you thought you ought to have on each particular sale?

A. Well, I gave that as a personal opinion, but in line with that, my statement, I think, was we ought to have 30 cents a barrel on our present volume.

Q. That is, on an average, that is?

A. On all we ship.

Q. Yes?

A. Yes.

Q. In other words, an average of 30 cents on your present volume?

A. Yes.

24924 Trial Examiner Norwood: That is a gross profit, is it,—30 cents a barrel gross profit?

The Witness: Yes, sir.

By Mr. Wooden:

Q. And if you took less than that wouldn't you be selling below your costs?

A. Why, less than what?

Q. Less than 30 cents.

A. Why, no, I told you that the 30 cents was profit that I was talking of.

Q. Well, then, if you took less than 30 wouldn't there be a loss?

Mr. McFadden: There would be the loss of the profit.

A. I will answer your question, no.

By Mr. Wooden:

Q. This 30 cents is an average on your entire volume, is it not?

A. It is a profit.

Q. Yes.

A. All right, it is an average profit.

Q. An average profit?

A. Yes.

Q. Haven't there been many cases where you took much less than 30 cents profit on particular sales?

24925 A. Some, yes.

Q. And aren't there some cases where you take 50 cents, or more, a barrel less?

Mr. Leisure: Less than what? The record is getting so confused I cannot follow it. Less than what?

Trial Examiner Norwood: Read the question.

(Last question read by Reporter.)

Mr. Porter: He did not say that. He said he would like to get it. Now, you are assuming he says he always did get it. He never said it.

Trial Examiner Norwood: Answer the question.

The Witness: Repeat the question, please.

Trial Examiner Norwood: Read it.

(Last question re-read by Reporter.)

Mr. Wooden: I would say less than your base price.

A. I would say no to that today.

By Mr. Wooden:

Q. When you say "today," just what period of time do you cover?

A. Well, I have explained to you that the minimum price that we will accept is treated in each individual case. I should say, generally speaking, we do not do as stated by you.

Q. (Indicating) I am showing you now, Mr. Coogan, Commission's Exhibit No. 2710, containing invoices of the Alpha Company to certain purchasers in April, 25926. 1938, and calling your attention to invoices to the C. Murphy & Son, of Dorchester, Mass.; will you tell us whether or not you realized 56 cents a barrel less than your base price on that invoice?

A. Well, of course, there is nothing on this that shows what our base price was at that time; but in this particular case, which covers the time that we were quoting abnormally low prices in the Boston market,—this is a part of Boston,—we continued in that market because it is one of our—it is our principal market—and certainly we would not go out of it regardless of where the price went to,—but now, to answer your question specifically, if you want to know it, I will have to figure it out.

(Witness figures on paper.)

Q. What base price were you using as of April, 1938?

A. I don't remember whether it was one fifty or fifty-five.

Mr. Werle: Where?

Trial Examiner Norwood: One fifty.

The Witness: In the Lehigh Valley. This shipment went from the Lehigh Valley in this particular case, and, as I figure it, this, after the deduction of your packages, and your discount, that this business nets us about one dollar at the mill.

By Mr. Wooden:

Q. And that was how much less than your base price?

A. Well, depending upon whether the base price
24927 was fifty or fifty-five cents—or one fifty-five or fifty, it would be approximately 50 cents a barrel.

Q. Now, take the invoice in the same exhibit to the—

Mr. Wooden: Can you find the invoice there that covers the shipment to Norfolk? Which one is that?

Mr. White: 73 in Commission's Exhibit 2710.

By Mr. Wooden:

Q. Invoices No. 73 in Commission's Exhibit 2710, to the Lums Hardware, Plumbing & Supply Company of Norfolk (indicating). How much less than your base price did you realize there?

A. (Witness figures.)

Mr. Porter: Your Honor, it seems to me that this is clearly a time-wasting proposition. The document speaks for itself. I don't see the need of asking the witness to make this computation when the document is there.

Trial Examiner Norwood: He is asking for an explanation, I think.

Mr. Porter: No, he is not. He is asking him to make the computation.

Mr. Wooden: It is part of this testimony about shrinkage. It is going into his direct testimony about shrinkage,—how much shrinkage they would take.

A. That particular shipment nets us just about one dollar at the mill—now, that is within a cent; I did not figure it down exactly,—or it is approximately 50
24928 cents under our going base from the mill from which that happened to be shipped at that time, which we don't usually do, we don't usually ship from that mill into Norfolk.

Q. That is Martins Creek?

A. Yes. We shipped only a few cars of cement into Norfolk, just enough to keep our brand in there.

Q. And that went right into a town where a competitor had a mill, didn't it, the Lone Star?

A. I don't know whether that mill is in Norfolk or not; they have a mill near Norfolk.

24934 Q. On page 23107, Mr. Coogan, line 4, did you mean to say there, or imply, that you didn't begin quoting delivered prices until some time after 1910, probably about 1912 (indicating the official transcript)?

A. No I shouldn't have said that because we quoted delivered prices from 1903 on, but that we did not have an absolute fixed policy until some few years after 1903; but what I said here, that by this date, 1910, it had become entirely general in our company.

Q. Did you begin your fixed policy of quoting delivered when you began the license agreements?

A. No, we did not.

24935 Q. Now, referring to pages 24195 and 24196, beginning at the bottom of page 24195, line 24, and running over to the middle of page 24196, including line 15—did you mean to say there that your company had access to the division sheets of the railroads regarding land-grant information and rates?

A. If it is necessary to get the division sheets, the railroads will furnish them to us. I don't think that we have ever been refused—give us the information, not furnish us the division sheets, but they will give us the information. They will do that to any large shipper. That isn't exactly a matter of secrecy.

Q. Is that done at all your plants? Was it done at your Alabama plant, for instance?

A. Yes. The only mills that we have, I think, where land-grant rates are involved at all are Alabama, St. Louis, and I think LaSalle, to a small extent.

Q. Don't you know it to be a fact that railroad company tariffs and instructions to their agents forbid the giving out of division sheet information?

A. I heard a Government witness on this witness stand, Mr. Hagie, testify that they could be secured by shippers.

Q. Will you answer my question as I put it?

Trial Examiner Norwood: Tell him what you know.

A. I know the division sheets are not in the hands of agents. They have nothing to do with them, and

24936 they are in the general freight office, and if a shipper, an important shipper, goes to the general freight office he can usually get them. I have no information as to having been refused.

Mr. Wooden: Mark these, please.

(Documents were thereupon marked for identification "Commission's Exhibits 3230-A, 3230-B, 3230-C, 3231-A, 3231-B, 3231-C, 3232-A, 3232-B, 3232-C, 3232-D, 3232-E, 3232-F, 3232-G, and 3232-H.)

By Mr. Wooden:

Q. You are a man with some railroad experience, are you not, Mr. Coogan?

A. Yes, some.

Q. I will ask you again if you didn't know that railroad tariffs forbade the giving out to the public of information regarding division sheets?

A. May I hear that question?

Trial Examiner Norwood: Read it.

(Question read.)

A. Railroad tariffs don't mention division sheets, so far as I know. That is an entirely separate matter from the tariffs.

Mr. Wooden: Your Honor, I would like to offer at this time papers marked, for identification, as Commission's Exhibits 3230-A, B, C, 3231-A, B, C, 3232-A to H, inclusive, being extracts from tariffs filed with the Interstate
24937 Commerce Commission and bearing the certification of the Commission, which show on their face that the witness' testimony regarding the availability of the division-sheet information to the public is not well founded.

Trial Examiner Norwood: Any objection?

Mr. Leisure: Well, I think that when a witness' testimony is sought to be impeached in this way, that we ought to be fairly accurate in our statements about it, because Counsel should not require the witness to be any more correct in his statements than he, himself, is. Mr. Wooden has just repeated, that when he testified that these were available to the public, that was incorrect. The witness did not so testify. The witness testified—

Mr. Wooden: I think he said they were available to important shippers.

Mr. Leisure: —that a shipper, in his experience, was always able to get it, and that he knew of no exception to it. Now, whatever these might show, they would not in any way conflict with the witness' own experience over a period of 30 years as to whether or not shippers are given that information. It doesn't in any way impeach the witness' testimony.

Mr. Porter: If Your Honor please, furthermore, I don't think it is the proper time for them to offer them. They may offer them as part of their case, but this
24938 isn't the proper time to offer them.

Mr. MacIntyre: It is very proper, if Your Honor please, to offer on cross-examination any documentary

proof that would tend to impeach the testimony of the witness, any testimony that he had given on direct or cross.

Trial Examiner Norwood: Well, did the witness testify—

Mr. Leisure: I have the further objection, Your Honor—

Trial Examiner Norwood: —that he couldn't get this information?

Mr. Wooden: That he could get it.

Trial Examiner Norwood: That he could get it?

Mr. MacIntyre: And did get it.

Mr. Leisure: For 30 years.

I add further to my objection, that these documents do not show at all what they are offered as purporting to show. On this one, Commission's Exhibit 3230-B, for identification, it says "Division sheets, percentage, issue, and routing instructions are for the information of our agents and accounting department and in no wise concern the public. Agents should, therefore, arrange to file such issues in a separate pigeonhole in their tariff case."

24939 Trial Examiner Norwood: It is my recollection that you had an expert here who handled the War Department business, who made positive statements about those division sheets.

Mr. MacIntyre: I don't think that they were as positive as this witness seems to recall them. They were something to this effect, as I recall them: That as far as he knew they could probably get them. It is possible that he didn't know what all of the railroads of the country were doing with respect to their relationships as to private shippers.

Trial Examiner Norwood: Do you claim that this shows that those division sheets are not available to shippers?

Mr. Wooden: Yes.

Mr. Leisure: No, they don't even show that.

Mr. Porter: At most, all they could argue would be that the agent oughtn't to have done what they did do, in giving them the information.

Mr. Leisure: Your Honor, I read to you from one of them. Let me read to you from another, Commission's Exhibit 3231-C: "Percentage, division of rates, and routing instructions are for the private use of agents and not subject to public inspection." That has to do with the

public; it has nothing to do with their own cus-
24940 tomers, the relationship of—

Mr. Wooden: Oh—

Leisure: —customer and railroad.

Mr. MacIntyre: There are several million shippers in this country.

Mr. Leisure: And let me point out again, that even if they did state that Mr. Wooden seems to think they stated when he offered them, that would in no wise impeach this witness' testimony that for a period of 30 years he doesn't know of a single instance when he was refused them. It wouldn't impeach his testimony in any way.

Mr. Wooden: It goes to the question of the availability of these matters, this information to shippers.

Mr. Leisure: We have never disputed that as to the public.

Mr. MacIntyre: If Your Honor please, there are several million shippers in this country. If they don't constitute the bigger part of the public—

Trial Examiner Norwood: Well, we are only concerned with these 79 Respondents whether or not these division sheets are available to them in figuring these prices.

Mr. MacIntyre: These things here show, though,—the exhibits now offered,—that there are no exceptions made
in behalf of these Respondents as against any other
24941 shippers; that there is no exception, and that they fall within the class of exclusion.

Mr. Leisure: If Your Honor can make that out of what I read, why—

Trial Examiner Norwood: I shall have to examine them, and I should like to be cited to the pages in the record containing this witness' testimony regarding it. The first thing is the question of whether he has made these statements which this contradicts, and the next question is, does this contradict it.

Mr. Leisure: That is right.

Mr. Wooden: I gave you the pages on the subject I showed the witness his testimony regarding it.

Trial Examiner Norwood: Could you give me those pages?

Mr. Porter: Your Honor, it is obvious that no instructions to railroads, regardless of what they may be, tend to contradict the witness' positive statement that he got the information. Maybe the railroad oughtn't to give them to him. That doesn't contract his statement that he got them.

Trial Examiner Norwood: He said something to the effect that they were available to others, or I don't know just what he said on that.

Mr. Porter: The witness has said nothing as to
24942 others. He said he has been able to get all the land-grant rates he wants. This document even on Mr. Wooden's construction doesn't—

Trial Examiner Norwood: This would be a basis for a contrary inference.

Mr. Porter: I don't think so, Your Honor. From what this witness testified to it can't raise a contrary inference.

Mr. MacIntyre: I pass these to Your Honor for Your Honor's study.

Mr. Wooden: On page 24196, the witness said: "Generally speaking, we have had not much difficulty in securing the proper land-grant rates. As a matter of fact, anybody who knows the land-grant figures and who has had access to a division sheet of the carriers' rates can quite intelligently figure out what the land-grant rate is which is applicable."

It goes not merely to the question as to whether he did get them but the difficulty in getting them if he did get them, and I don't doubt that he got them.

Mr. Leisure: If Your Honor pleases, I object to those being offered.

Mr. Wooden: Maybe he did it by some kind of inside influence with the railroads.

Mr. Leisure: Well, now, that is always, of course,
24943 your opinion on everything, Mr. Wooden.

I have a further objection to add to those documents being received.

Trial Examiner Norwood: What?

Mr. Leisure: And that is this: That if they are received they would be impeaching the Counsel's own witness, because Mr. Hagis said he could get them, and I object to them on that additional ground.

Trial Examiner Norwood: Well, you wouldn't object to that, would you?

Mr. Leisure: And not to impeach his own witness. No, I object to it.

Trial Examiner Norwood: You have no objection to the identification?

Mr. Leisure: I do not think so, not if they are properly certified. I have not looked at them as to that.

24945 Brooklyn, N. Y.,
October 17, 1939.

24947 (COM. EXS. 3230-A, 3230-B, 3230-C, 3231-A, 3231-B, 3231-C, and 3232-A to 3232-G, inclusive, were offered and received in evidence.)

F. M. COOGAN thereupon resumed the stand and testified further as follows:

Cross-Examination (Continued) By Mr. Wooden.

24949 Q. Now, referring to Respondents' Exhibit 634, a circular of the National Builders' Supply Association, dated October 14, 1929, will you look it over and then tell us whether or not the dealers who engaged in trucking from the cement mills were not prominent among the dealers who were cutting the differential between the manufacturers' price and the consumers' price?

A. Why, I don't see anything in this letter that would indicate that the dealers who were trucking were any more prominent in this than other dealers. I fail to see anything in there—I don't think they were.

Q. Well, I am asking you, based upon your own recollection and experience.

A. Yes. Well—

Q. Whether or not the dealers who were prominent in trucking were not prominent in cutting the differential?

A. Well, I have no recollection as to who did the
24950 cutting. I wouldn't say that one class was any more prominent than the other.

Q. Would you say that the dealers who did trucking had the opportunity and the advantage if they wanted to use it in cutting the differential?

Mr. Leisure: Now, if Your Honor pleases, I think that goes too far. That merely calls for the conclusion of the witness as to whether it is his best guess as to whether that would be true or not, and I don't think we ought to go into that.

Trial Examiner Norwood: I think it asks—I think that he is wanting the facts with respect to the price situation there.

Mr. Leisure: Well, then he should ask that question—May we have that question read? I think it doesn't ask for that? May we have the question read?

Trial Examiner Norwood: Well, I think it does. Read the question.

(Question read.)

Mr. MacIntyre: Well, it simply asks for a federal statement as to whether one had the advantage. There might be an advantage in half a dozen ways.

Trial Examiner Norwood: All your facts are in the record with regard to that from which you can draw the inference. I don't see that it is going to help it any
24951 to have this witness acknowledge that except that this is cross-examination and he has gone into that price situation. He has a right to get his reaction to those price facts. So I think he may answer.

Objection overruled.

The Witness: May I have it read again, please?

(Question re-read.)

A. No more so than the other dealer, if they want to forego the profits.

By Mr. Wooden:

Q. Wasn't the dealer who did the trucking that invaded the market of the other dealers who didn't do trucking and cut their price in the markets of the dealers who didn't do trucking?

A. To some extent, yes.

Q. Now, referring to Respondents' Exhibit 650, a circular of the Alpha Company, dated April 1, 1931, I take it that marked the time when the Alpha Company discontinued its efforts to maintain a dealer service plan such as the Lehigh plan of November, 1930?

A. Yes, sir; that is correct.

Q. I note this language here:

"It is possible that a much needed stabilization of local markets will result through the use of uniform quotations throughout the industry."

24952 Did you then put in a uniform quotation?

A. What do you mean by "uniform quotation"?

Q. Well, I am referring to the language that is in your own circular there.

A. Well, that refers to the dealer situation and not to the manufacturer situation.

Q. Well, were you, in putting out the announcement, inaugurating a policy which was intended to result in the stabilization of local markets through the use of the uniform quotations?

A. No, sir; we were leaving the matter of local markets up to the dealers in that market. We were having no part in it at all. We had withdrawn all manner of dealer protection and attempted in no way to control the re-sale price.

Q. The language here is "uniform quotations throughout the industry."

A. Well, as I say, I know that that is what he referred to. He referred to the dealer business and not to the business of the manufacturer.

24985 Q. Do I understand that you would not sell a million barrels any cheaper per barrel than you would sell a thousand?

A. Well, millions don't come up every day. When there has been a question of millions it is usually purchased by the Government, and, in those cases there have been lower prices made.

Q. Well, why is it that Alpha Company has not felt it was good policy to make quantity prices?

24986 A. Mr. Wooden, if we attempted to make quantity discounts it would simply mean that we would be building up the large dealer and driving out every other small dealer out of business. The man who buys a hundred cars a year, according to your statement should be sold at a less price than a man who buys five or six cars a year. Now, those two people are competing for the same business in the same markets, and how could the one live without the other?

24987 Q. Do you recognize a difference in cost of selling as a basis for a difference in the price of cement?

A. The Alpha Company have never attempted to segregate the costs of selling as between different classes of work. We simply take our total sales expense, divide it by the number of barrels shipped, which give us our selling expense per barrel.

Q. I want to ask you whether or not you remember with regard to the old license agreements, and the patent litigation over the Hurry and Seamen patent, whether that litigation was not settled by an agreement among the parties affected by the patent several years before the

court decision on the validity of the patent was handed down?

Mr. Leisure: If Your Honor pleases, I want to object to that, going back into this ancient history and asking questions of that kind will only necessitate our following it up, and we have now gotten into so many different cases.

This goes back prior to the old Cement Case, and he is inquiring about agreements back at that time. It will only necessitate our going back over the same ground, and it really is not covered by the issues in this case.

24988 Trial Examiner Norwood: Well, that question was not litigated, was it?

Mr. Porter: In the old case, Your Honor, they put that in evidence, and the court disregarded it.

Mr. MacIntyre: Your Honor pleases, Counsel asked this witness certain questions regarding that agreement on direct examination. He brought it in.

Trial Examiner Norwood: I remember that.

Mr. Werle: That was because the Government put in an exhibit, Your Honor, that we had to bring it in.

Mr. Leisure: That was because the Government brought in that exhibit.

Mr. Porter: We simply had to explain what the exhibit was.

Mr. Leisure: This goes into a new field which we have not followed.

Trial Examiner Norwood: I think he may cross-examine him on it.

Answer the question.

The Witness: May I have the question, please?

Trial Examiner Norwood: Read it.

(Last question read as follows:

"Q. I want to ask you whether or not you remember with regard to the old license agreements, and the patent litigation over the Hurry and Seamen patent, whether

24989 that litigation was not settled by an agreement among the parties affected by the patent several years before the court decision on the validity of the patent was handed down?")

A. The litigation in that case lasted from the early part of 1903, as I remember it, until some time in 1906, at which time there was a—some sort of a settlement arrived at. I don't know what the settlement was.

By Mr. Wooden:

Q. You don't recall whether the settlement was not reached before the court decision on the matter was handed down?

A. Well—

Q. The license agreements ran about 1911, didn't they?

24990 A. I think the end of 1910, as I remember it.

Q. Wasn't the court decision—as a matter of fact, wasn't the court decision handed down about the time that the license agreements were discontinued?

A. Well, that is a court decision in a case against the Sandusky Cement Company and had nothing to do with the original case.

Q. Why were the license agreements discontinued?

A. Well, because in the Sandusky case, as I remember it, the validity of the patent was not upheld.

Q. In connection with your work as a member of
24991 the Marketing research committee, there were some questions that were eliminated from the questionnaire which Clark-Burns prepared, and which questions were to be answered by the committee. Do you remember that?

A. No, I don't remember that.

Q. Referring to Commission's Exhibit 956-3P, a letter of Mr. Blaine Smith, addressed to you and to other members of the committee, that makes reference to the elimination of certain questions which were to be answered, the elimination of certain questions from the questionnaire, and those questions were to be answered by the committee?

A. It doesn't state in that that they were eliminated from the original questionnaire. It says "attached as a questionnaire from Drs. Burns and Clark." It doesn't say that they were eliminated. They were never in the original questionnaire.

Q. As set out, but I am referring to the language there about taking out of the questionnaire some questions which were formerly there, and I want to ask you what questions were so eliminated?

A. I don't know. I don't remember those.

Q. Now, you were a member of this committee. This is only 1935, and you can't tell us on that particular point?

A. I certainly cannot.

Q. What modifications of the basing-point system
24992 were discussed in the Marketing Research Committee?

Mr. Leisure: I think first we should have a preliminary question as to whether it was discussed.

Mr. Wooden: All right. I will ask that.

A. I don't think there was any modification discussed at any meeting that I attended. I certainly don't remember it.

By Mr. Wooden:

Q. Didn't you know that possible modifications of the basing-point system were being studied by Professors Clark and Burns in collaboration with the Marketing Research Committee, of which you were a member?

A. The study of Clark and Burns was not confined to the study of basing-point systems; it was confined to a study—it was to cover a study of the whole marketing practices then being used generally in the industry.

Trial Examiner Norwood: Does that answer that question?

Mr. Wooden: No, it doesn't.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Now, don't tell us what the work was. Just answer that question as to that particular feature of the work.

The Witness: Can I add my qualifications to it?

Trial Examiner Norwood: Answer the question first.

24993 A. I will say yes, that and a great many other subjects.

Q. Now, referring to Commission's Exhibit 958-5-O, a communication from Blaine Smith to members of the committee, of which you were one, and a memorandum received from Dr. Burns which Mr. Smith says he told you of "the other day" dealing with possible modifications of the basing-point system. Now, can you tell us what the possible modifications of the basing-point system were that were referred to there?

A. No, I can't.

Q. Don't you recall?

A. No, I don't think that I ever discussed that in detail either with Dr. Burns or with Mr. Smith.

Q. When you say "in detail" you mean to exclude or to imply that you may have discussed it in general?

A. No, I have no recollection of having discussed it even.

Q. Well, now, in this Exhibit 958-5-O, Mr. Smith quotes Dr. Burns as saying that there were some blanks in the memorandum, where they felt they couldn't make their suggestions more specific without the benefit of discussion with members of the committee. You don't recall having any such discussion?

A. I might have been present at a meeting of the committee where all matters pertaining to the study being made by Burns and Clark was discussed, but I have no recollection of any particular subject.

Q. Mr. Smith goes on to tell you, among other
24994 things, that you look at the material and digest it and get together at the earliest opportunity. Now, does that help you remember whether or not you did have such a discussion?

A. I might have attended the meeting. I don't remember it in particular.

Q. You can't tell us what modifications of the basing-point system were discussed or proposed?

A. No, sir; I have absolutely no recollection of any modification that was proposed.

Q. Do you recall members of the Marketing Research Committee supplying Professors Clark and Burns with the names of dealers whom they might consult regarding the subject of trucking?

A. Yes, I think that they did give them the names of a great many dealers in different sections.

Q. And they didn't give them the names of any dealers who favored trucking, did they?

A. That I don't know. I told you they gave them a list of a great many dealers. Now, whether they favored or were opposed to trucking, I don't know.

Q. Did you give them the names of any dealers who were prominent in dealer association work and who opposed trucking?

A. I would have to see the list of people that we gave them before I would answer that question.

Q. Didn't you receive suggestions and advice on that subject from Mr. MacQueen of the National Dealers Association?

24995 A. I have never discussed any business matters with Mr. MacQueen, as far as I am concerned, and I don't know—

Trial Examiner Norwood: He asked you whether you received.

The Witness: Well, I certainly didn't receive them.

By Mr. Wooden:

Q. When I say "you" I don't mean you personally, but your marketing research committee.

A. I don't know anything about that.

Q. Can you or can you not answer my question as to whether or not you gave the professors the names of any dealers who favored trucking?

A. I don't know the names of dealers that were given. Our company didn't give them any.

Q. I will ask you whether you can say whether George Castell, president of the Acme Builders Supply and Fuel Company of Buffalo favored or opposed trucking?

A. I don't know.

Q. How about B. E. Reed, sales manager of the Goff-Kirby Company, Cleveland, Ohio?

A. I don't know.

Q. How about all the other names on the list, Commission's Exhibit 913-2M?

A. I don't know, and I don't see a single Alpha Company dealer listed there, except we might have
24996 shipped a car or two of cement to Mr. Chaffee at Buffalo.

Q. Didn't you know Mr. Chaffee was very prominent in the activities of dealers' associations which were opposed to trucking?

A. I think that he was opposed to trucking.

Q. Didn't you know Mr. MacQueen, who appears on this list, was opposed to trucking?

A. No, I didn't know that Mr. MacQueen, himself, had ever taken any position either for or against trucking. I don't see how he could, because he represented dealers, and if there was any difference of opinion I don't think that he could go either one way or the other.

Q. Well, weren't the dealer associations pretty uniformly opposed to trucking?

A. I didn't—I wouldn't confine it to dealers' associations. I would say dealers generally were opposed to trucking.

Q. You say you don't see how Mr. MacQueen could represent dealers on the subject. I refer you to Exhibit 913-W. You received a copy of that communication from Mr. Blaine Smith mentioning the memorandum received from Mr. MacQueen, didn't you?

A. This doesn't state what his views on trucking were.

Q. Yes. It simply refers to a memorandum received from him regarding the subject.

A. Well, I would have to see the memoranda, of
24997 course. If it states his position. I don't know what his position was.

Q. Do you really mean that, Mr. Coogan, that you never knew what Mr. MacQueen's position on trucking was?

A. No, I really didn't know what his position was; no, sir.

Q. Do you mean to say that you do not know what the position of the dealers' associations was on trucking?

A. I said dealers' associations and dealers generally opposed trucking.

Q. Can you point out a single name on Commission's Exhibit 913-2M where you knew that such dealer favored trucking?

Mr. Porter: Your Honor, I object to that question. The witness has said there is only two names he ever recognized or knows anything about on that list.

Trial Examiner Norwood: Yes.

Mr. Porter: He has told about that. That is mere duplication and asking the same question.

Mr. Wooden: He did not say that; he said one or two customers.

Trial Examiner Norwood: He said he did not know. But to make sure, he may answer this question.

The Witness: May I have the question?

Trial Examiner Norwood: Read it.

(Last question read by Reporter.)

A. I don't know the position of anybody except the
24998 one that I mentioned.

By Mr. Wooden:

Q. Did you know this man John Suelzer on the list as being a secretary of a dealers' association in Indiana?

A. I didn't know that, no.

Q. Did you want Clark and Burns—Professors Clark and Burns—to know the views and the desires of dealers who favored trucking?

A. I wanted Burns and Clark to have all the facts in arriving at their study.

Q. Referring back to this subject a few minutes ago of proposed modifications of the basing-point system,—did you ever suggest any modifications?

A. No, I don't think I did. I think we acted through our own mills, and did as we pleased with them.

Q. I mean, in connection with your activities on the marketing research committee?

A. No, I am quite sure I did not.

Q. I would like to make sure whether or not your testimony regarding the relative cost of water and rail transportation is intended to be limited to the Alpha Company's own mills, or whether you intend to make it broader than that.

A. No, I limited my testimony to our own experience.

Q. You don't mean to say, then, that in general water transportation is as costly, or more so, than rail transportation?

24999 A. I do, in the same sized lots, yes.

Q. In other words, you undertake to make that broad statement outside of the experience of your own Alpha mills?

A. No, I base it on our own experience and we know what it costs.

Q. Well, there are a number of your Alpha mills that don't have any water transportation at all, as I understand it.

A. Yes, there are several of them.

25003 Q. (Indicating) Referring to Commission's Exhibit 3196-YY, the paragraph number 4 there is what I am referring to.

A. The license agreement has a provision in there entitling the mills in New York State to quote 3 cents a barrel less in New England or New York where the freight rate is 25 cents or more per ton less than the freight from the nearest mill of a licensee in the Lehigh district.

25006 Q. Mr. Coogan, has the Alpha Company ever been a party to any agreement, understanding, or arrangement with competitors for the purpose of controlling production of cement?

A. No, sir.

25011 Q. Isn't it a fact, Mr. Coogan, that large awards on large public purchases operate to throw one

company considerably ahead of another in its sales and shipments at a given time?

A. That might have that effect.

Q. Have you encountered, or have you seen and heard expressions of criticism by one company against another because of getting larger shares of business than the critics thought they were entitled to?

A. Well, I have heard statements wondering how they got the business at times, if they happened to be shipping very large. Now, sometimes that might be large contracts, or it might be another reason. I don't know.

Q. Have you ever heard such criticisms following awards by lot on large quantities?

A. No, I never have on awards of that kind.

Q. Do you recognize that the obtaining of a larger proportion of the business than a company has been accustomed to have tends to produce unrest and a tendency toward price cutting?

A. Do you want me to answer for my own company?

25012 Trial Examiner Norwood: Yes.

A. It does not have that tendency with our company. We get all the business that we can.

25021 Q. Well, do you have in mind that the normal profit that you consider you ought to have is this 30 cents a barrel? I mean, when you made up your base price?

A. That is a normal profit that I think we should have on present-day volume, but I didn't say that we had ever for years been able to get that figure.

Q. Was there a time when you added 30 cents a barrel to your costs in order to arrive at your base price?

A. There have been times in the history of the company when our profit was 30 cents and sometimes a little bit more than that.

Q. Is your answer that you added it at one time or sometimes in your history, 30 cents a barrel to your base price?

A. Well, if our profit showed 30 cents, why, we would have to.

Q. Of course, your average realization is not the equivalent of your base price, is it?

A. No, not in all cases; that is correct.

Q. Now, take your base price at Ironton. Does that

base price contain a figure or include a figure that is added to cover your margin above cost?

Mr. Porter: Your Honor, I think he should specify what base price he means. There has been a long variety of prices as shown in this record. He ought to specify
25022 the time.

Mr. Wooden: I said "Ironton."

Mr. Porter: Yes, but what time?

By Mr. Wooden:

Q. Take your present base price at Ironton.

A. May I have the question, please?

Trial Examiner Norwood: Read it.

(The question, as amended, was read as follows:

"Q. Now, take your present base price at Ironton. Does that base price contain a figure or include a figure that is added to cover your margin above cost?")

A. Yes, our present base price at that mill is above our cost.

By Mr. Wooden:

Q. What figure to cover your margin above cost does your Ironton base include?

A. May I have that question?

Mr. Porter: Your Honor, I don't think that it is relevant on cross-examination to explore costs at individual mills. That is kept definitely confidential, and I think it is very improper to ask this witness his costs at a particular mill. I object to the question on that ground.

Mr. Wooden: That doesn't show or doesn't call
25023 for the costs of the company.

Mr. Porter: It certainly does. If our base figure is 1.60 and we have 30 cents' profit, our cost is 1.30.

Trial Examiner Norwood: No. No. He was asking him for his pricing method.

Mr. Porter: No. He has asked him for a precise figure which would correctly show our cost.

Trial Examiner Norwood: That is an assumed figure, as I understand.

Mr. Porter: No. He was asked for a direct figure. I submit that isn't proper.

Mr. Wooden: No, that isn't an assumed figure, Your Honor, but, certainly, the question of how the base price is made up and what factors enter into it is within the scope of this case, and he, on direct examination, talked

about the normal profit. I am just seeking to find out what margin is added to the base price at Ironton.

Mr. Werle: Your Honor, we didn't go into the question of costs or normal profit at all on direct. That was brought out on cross-examination.

Trial Examiner Norwood: I think there is confusion there.

Mr. Wooden: No.

Trial Examiner Norwood: Because the base price ordinarily includes two things, costs and profits

25024 Mr. Wooden: Yes.

Trial Examiner Norwood: Profits are included in the base prices. It doesn't add it on top of it.

Mr. Porter: Now, he asks how much profit is included in the base. If he gives that figure then he knows the cost, and I submit—

Trial Examiner Norwood: He is entitled to know that.

Mr. Porter: No, he is not entitled to know our confidential cost figures.

Trial Examiner Norwood: I think so, in view of his—

Mr. Porter: We haven't shown it, Your Honor.

Trial Examiner Norwood. —of his testimony on direct examination.

Mr. Porter: No, we didn't put in a word of that. That was all on cross. Mr. Wooden has brought that out on cross; we never opened the door.

Mr. Leisure: It was never touched on at all on direct.

Mr. Porter: Mr. Wooden is the man that brought this 30 cents into it.

Mr. Wooden: No. I want to call attention that on pages 23991 and 23998, you asked him specifically as to how he arrived at his base price, and he brought in that element of normal profit, and so on.

25025 Mr. Porter: Not in any sense. You brought that out.

Mr. Wooden: No.

Trial Examiner Norwood: I am going to overrule the objection.

Mr. Wooden: I didn't bring out the 30 cents.

Trial Examiner Norwood: Answer the question.

Read the question.

(Last question read.)

A. I could not tell you the cost at our Ironton mill from memory. I don't know.

By Mr. Wooden:

Q. Couldn't you tell the amount of margin per barrel that is added at any of your base mills?

A. No, not from memory.

Q. Mr. Coogan, isn't it a fact that some time during your experience in the industry that at meetings of members of the industry it was agreed and understood that discussions as to prices should not be recorded?

Mr. Leisure: Now, if Your Honor pleases, I object to these broad general questions. I don't know whether they are designed to confuse the witness or not. If they are not so designed then they should be limited as to time and place; then the witness would be able to answer intelligently on them. I object to it further on the
25026 ground that there is no evidence—the witness hasn't said there were any such meetings as Counsel is now asking him about. Counsel asks him what happened at certain meetings. The witness hasn't said there were such meetings. There should be a preliminary question as to when these meetings took place, if they took place at all. Then we can have something as to time and we will know what the question means and then we can understand the answer.

Trial Examiner Norwood: Read the question before we discuss it any further.

(Last question read.)

Trial Examiner Norwood: Objection overruled.

A. No, sir; not to my knowledge.

By Mr. Wooden:

Q. Now, you testified a day or two ago that you did not agree with Mr. John Trainor when he said the industry must systematically restrain competition or be ruined. That is correct, isn't it?

A. That is correct.

Q. How do you reconcile that testimony with your testimony on page 23948, when you said that you presumed you had the same thing in mind that Mr. Trainor had in mind when Mr. Trainor wrote that the main objects with the Clark-Burns study was to establish in their minds the
25027 importance of overhead and idle capacity in our industry, which makes old-fashioned unrestrained competition simply unworkable and some form of market control necessary (indicating a copy of the official transcript to the witness)?

A. I don't see that that is anything I said. That is something that you said.

Q. Yes. But I am directing your attention to what you said on the following page, line 21, where you said you presumed you had the same things in mind that Mr. Trainor wrote as to what their main objects were.

A. Well, I referred in that to overhead and idle capacity. That is what I stated there.

Q. Yes. But Mr. Leisure has just asked you whether that will correctly—Mr. Leisure had asked you whether that correctly had described your activities, and you said that you had presumed you had the same objectives in mind as stated in that letter.

A. Well, I certainly never had anything in mind about the restraint of competition.

Q. Mr. Coogan, has the Alpha Company ever had any arrangement with any competitors by which it made or received any adjustment because of the departure of either the Alpha Company or its competitors from the proportion of the business which past experience had shown them to be handled by the different companies?

25028 A. No, sir; we have not.

Q. Did you furnish Mr. Conn, or anyone else, the information to the effect that your company was entitled to a certain percentage or a certain barrelage on the basis of its past record?

A. Well, that was up during the work of the allocation committee.

Q. Yes.

A. Well, that's the only part that I remember about it.

Q. Do you remember that a plan of that sort was presented and discussed at a meeting of the Northeastern District of the Institute?

A. No, sir; I don't think I was ever present at such meeting; I don't recall having heard it.

Q. Did you ever furnish any,—or did the Alpha Company ever furnish any such figure to Mr. Coffin showing what proportion of the business the Alpha Company was entitled to?

A. I don't know that we did.

Q. Don't you know one way or another?

A. No, according to—to the best of my knowledge, we did not.

Q. Do you remember any discussions at the meetings of

the Northeastern Division to the effect that the chain companies on the basis of past records were entitled to 62 percent of the business, and the independent companies entitled to 38 percent?

25029 A. I never heard that discussed at any meeting that I attended, never in my life.

Q. (Indicating) Referring to Commission's Exhibit 577-2P and 2Q, and calling your attention to the fourth paragraph of that letter from Mr. Coffin to Mr. Conn, you say you never heard that discussed at any meeting, the division of 62 and 38 percent?

A. Well, this was during the Code period.

Q. Yes, I understand.

A. Well, I told you that there were meetings of allocation committee during the Code period.

Q. Well, you did hear that discussed during the period, did you?

A. Well, I told you, it has been discussed at the meeting of the Allocation Committee.

Q. I mean, the percentage division between chain companies and independent companies.

A. Well, I think what is stated in that letter or minutes below—I don't know what there might have been up—I don't remember particularly that.

Q. (Indicating) In Commission's Exhibit 577-QQ, Mr. Coffin says he is addressing a similar letter to each chief executive of the smaller independent operators in districts 1 and 2. Did you receive any such communication from Mr. Coffin?

A. We don't happen to be one of the smaller companies.

25030 Q. I know that; I knew it when I asked the question. I ask you whether the Alpha Company received any such communication.

A. I am quite sure we never received any such communication.

Q. Did the Alpha Company ever furnish Mr. Coffin with information as to what percentage or what barrelage it was entitled to under this proposed plan?

A. We wouldn't hesitate to give him any figures that we had already given to the Allocation Committee. I don't know, to my own knowledge, but I presume he got the figures from the Allocation, through committee work.

Q. Well, you wish to repeat, do you, your testimony

that the Alpha Company never became a party to any arrangement with competitors by which any adjustment was made between them on the basis of what their past performance had been?

A. I do.

Q. Were you on the allocation committee?

A. No, sir; I was not.

Q. Was an officer of the Alpha Company on it?

A. I think so.

Q. Who was that, Mr. McKelvy?

A. Yes.

Q. Have you watched the reports from time to time of Mr. Mallory so that you could tell whether the various companies were increasing their percentage of the business beyond what it had been?

25031 A. Why, I always watch the statistics of Mr. Mallory, and watch the movement in business, both as a total and as far as possible with individual companies.

Q. Haven't you noted that the individual companies' percentage remained approximately the same from year to year?

A. I certainly have not.

25033 *Redirect Examination by Mr. Leisure.*

Q. Mr. Coogan, on your cross-examination, Mr.
25034 Wooden asked you with respect to the amount of freight charges in certain shipments—on page 24493 of the record, Mr. Wooden—will you tell us what percentage freight takes on an average in your delivered prices?

A. From the figures which we have taken off of our records from time to time, the freight on our shipments represents from 24 to 26 percent of the delivered price.

25035 CHARLES P. POSTELLE was thereupon called as a witness for the Respondents, and, having been
25036 previously sworn, testified as follows:

Direct Examination by Mr. Leisure.

I am employed by Alpha and my position with that company is southern sales manager. I have been in the cement business about 22 years and with Alpha since it bought the plant from Lindley C. Morton in Birmingham in May, 1928. I have been southern sales manager since the latter part of 1928 succeeding Mr. McCurdy after his resignation. In
25037 that capacity I have charge of the salesmen; that's my main job. I direct their activities in the Southeast; we cover eight states. That work, in addition to my duties of supervision over salesmen, has to do with the submission of bids in that section. We have complete charge of that in the Southeast.

Q. I would like to call your attention to a Commission exhibit here—

Mr. Leisure: Commission's Exhibit 1098, Mr. Wooden.

Q. —which purports to be a tabulation of prices made in the U. S. Naval Air Station at Pensacola on April 16, 1931.

Mr. Leisure: There is also an exhibit, Mr. Wooden, which I am taking up now, Commission's Exhibit 3103-A to C, dated April 14, 1931.

By Mr. Leisure:

Q. I want to show you both of those exhibits, Mr. Postelle, and ask you if you had anything to do with that transaction (handing documents to witness)?

A. We did. We prepared this bid at the Birmingham office.

25038 Q. Mr. Postelle, can you identify Respondents' Exhibit 817, for identification?

A. This is instructions from the Naval Air Station at Pensacola advising the prospective bidders that the switching charge from Pensacola to the Naval Air Station is $8.13 per car.

Q. Does it or does it not purport to give any of the local transportation costs at Pensacola to be used in submitting bids?

A. It does.

Q. Did your company use that information in submitting the bids?

A. It did.

Examination on Voir Dire.

25040 Mr. Wooden: I understood your statement to be, Mr. Postelle, that this particular statement was received in connection with some particular proposal.

The Witness: This proposal (indicating).

Mr. Wooden: And which one is that?

Mr. Leisure: Commission's Exhibit—

Mr. Werle: 1098.

The Witness: Commission's Exhibit 1098.

Trial Examiner Norwood: Did this come along with the invitation (indicating)?

The Witness: Yes, sir.

(RESP. EX. 817 was offered and received in evidence.)

Direct Examination by Mr. Leisure (Continued).

25041 The witness identified Resp. Ex. 818 as a memorandum made up by Mr. Bethune in Alpha's office addressed to Mr. Shaw, who was in Alpha's office at the time, telling him what price to quote on Alpha cement in connection with this proposal that we refer to (Com. Ex. 1098); Resp. Ex. 819 as Alpha's original price card used in the Birmingham office giving Alpha's commercial price at Pensacola, Fla. over a period of several years.

Q. If you know, Mr. Postelle, will you tell us how your prices on this letting were determined?

A. We obtained land-grant rates from the railroad or from our records on previous lettings, as I remember this particular case. The Naval Air Station at Pensacola called for bids on cement rather regularly back in those days, and still continue to call for bids fairly often, and with that information giving the land-grant rates that we found from the several mills in the district, we took the land-grant rate from the lowest base figure, which was Boyles at that time,

25042 added the base figure at their plant to this land-grant rate to establish the price that we would quote on an f.o.b. mill basis, which is the figure shown on this computation.

Shall I give the figures?

(RESP. EXS. 818 and 819 were offered and received in evidence.)

By Mr. Leisure:

Q. You have explained how you reached your f.o.b. mill price, Mr. Postelle. Did you reach any price in ad-
25043 dition to your f.o.b. mill price; if so, how did you arrive at it?

A. This memorandum shows that we bid a price of 2.337 in cloth, f.o.b. cars, Pensacola, for Warrington, Fla., which was the destination for the Naval Air Station. This price of 2.337 was arrived at by taking our commercial price which was in effect at Pensacola at that time, in April, 1931.

This card shows that our price at that time, in Pensacola, was 2.31, and to that price we added the switching charge, which we had computed on the basis of the exhibit just referred to of $8.13 per car, which came to—we used the figure of .027 per barrel, switching charge, which added to the f.o.b. Pensacola price that we were using of 2.31, gave us the 2.337 for Warrington, Fla.

Q. That last figure, did you get that from Respondents' Exhibit 817?

A. Yes, sir.

Q. Is that the exhibit you had reference to?

A. That is the exhibit I referred to, the switching charge of $8.13 per car. The price of $2.31 is f.o.b. cars, West Pensacola, Fla. We found in checking—we have no card for that point, but we found in checking our rates at that time, that it was the same as Pensacola, so we used 2.31.

Trial Examiner Norwood: That was figured how? 2.31, how was that figured?

The Witness: Sir?

25044 Trial Examiner Norwood: How did you figure your commercial rate there at 2.31?

The Witness: I say, we figured the 2.31 price at West Pensacola on the same basis that we figured Pensacola.

Trial Examiner Norwood: That was the base?

The Witness: At that time it shows it was a base, Pensacola.

Trial Examiner Norwood: Pensacola was a base?

The Witness: Yes, $2.31 was the price that we had using as a base at Pensacola.

The witness further identified Resp. Ex. 819 as a card that Alpha has been using in its Birmingham office for approximately seven or eight years. It is the identical sys-

tem that Alpha has used since this plant has been in operation but the card itself was not used until about 1931. Previous to that time, Alpha kept it on a different system.

By Mr. Leisure:

Q. Well, while you are on that, before we leave it, how is the card made up, Mr. Postelle?

25045 A. This card is made up, of course, as is shown here, a blank card, which we have, as I say—we have kept it in the office a long time, and as we find prices quoted in the field at different destinations by our competitors we immediately make up the card and figure out the different freight rates shown on this card and show the authority for the price that we have here.

Q. Can you tell me whether or not, Mr. Postelle, this town price card shows any record of every change in price at that town during the period covered by the card?

A. It does.

Q. For how many towns in your territory do you have such a town price card?

A. I would say about 800—maybe a thousand.

Q. Are there other towns, other than the 800—in other words, how do you select towns which appear on this card?

A. We only make cards for the towns where we either have dealers, or where we have been trying to get dealers, and keep a card for that particular town, and not for the dealer.

Q. I would like to call your attention to another Commission's exhibit, Mr. Postelle. I have reference to Commission's Exhibit 385-A, which purports to be an interoffice letter from the Birmingham office of the Lehigh Portland Cement Company to the Allentown office, dated April 24.

Mr. Wooden: What year?

25046 Mr. Leisure: It is dated April 24, 1931.

By Mr. Leisure:

Q. (Handing document to witness.) You will note it reads, Mr. Postelle, in part: "The 1.712 quotation by Alpha is an absolute contradiction of what we were given to understand prior to submitting the bid."

Did you bid 1.712 on that bid?

A. We did not.

Q. Further quoting from the Government exhibit: "Our

reason for not quoting 1.712 is because we felt reasonably certain that Lone Star would use that figure and because we were directly advised by Alpha that 1.72 was the figure they would use. It certainly cannot be claimed that a typographical error was made resulting in quoting 1.712 instead of 1.721, as there was no intention on their part to quote other than 1.72, and the matter is entirely one of dropping the mill."

Mr. Postelle, is the Lehigh man correct in stating that the Lehigh Company were advised by the Alpha Company that they would use the price of 1.712?

A. He is absolutely wrong.

Q. Did you give any information to any of your competitors, or was there any given, to your knowledge, on this letting, as to the price you were going to bid?

A. We gave no information to our competitors, and never have given any information to our competitors.

25047 Trial Examiner Norwood: Well, you mean that you did not give that information, don't you?

The Witness: Absolutely, and I am sure that I would know it if anyone else did in our organization at Birmingham.

Trial Examiner Norwood: Anyone in the Alpha Company?

The Witness: Well, I said in our organization at Birmingham. I know nothing about anyone outside of our organization in Birmingham, but I know that we gave no information, and I would feel the same way about anybody else in our Birmingham office.

By Mr. Leisure:

Q. Will you tell us whether or not your office at Birmingham is the place where this information would come up?

A. Absolutely.

Q. Now, this work sheet that you looked at, Respondents' Exhibit 818, can you tell us whether or not you ever had any intention of bidding either 1.712 or 1.72 or 1.721, as is mentioned in this Lehigh statement?

A. We had no intention of bidding anything except the figures shown of 1.717.

Q. You say shown where?

A. Shown on our work sheet.

Q. That is Respondents' Exhibit 817?

A. Exhibit 818.

25048 Mr. Werle: Exhibit 818?

The Witness: Yes. And this is certainly substantiated by the Government Exhibit 1098, that that's the figure that we bid.

Q. Suppose you tell us, then, Mr. Postelle, whether, in your experience, at any time, since you have been with the Alpha Company in submitting these competitive bids to the United States Government you have ever known of any case in which any of your competititors were advised what the Alpha Company intended doing, or was

25049 going to do, or anything about it, before the bids were opened?

A. I have never known of any such instance.

Q. Now, you having testified to that effect, as to what your company did,—have you ever known of any case on these Government bids, where any of your competitors have advised you what they would bid, or what they intended to do before the bids were opened?

A. They have never advised us. I know nothing of any such thing.

The witness identified Resp. Ex. 820 as a copy of a letter he wrote on August 17, 1933 to Mr. J. G. Bragg,

25050 general sales manager, at Easton. The subject matter of this letter is to advise him (J. G. Bragg) that Alpha has received a proposal from the United States Engineers' Office at Nashville, Tennessee in connection with the bids to be opened on August 25, 1933. [Com. Ex. 789.]

Q. What were your recommendations, Mr. Postelle?

(RESP. EX. 820 was offered and received in evidence.)

25051 A. May I refer to this?

By Mr. Leisure:

Q. Certainly.

A. We recommended to Mr. Bragg that Easton allow us to bid on this letting from our La Salle mill, and to quote the land-grant rates obtained from the Government, in view of the fact that the mill that we would normally ship to that market from was not located on a railroad that would allow us to ship to this particular destination.

Shall I give a further explanation of it?

Q. Yes, I would like to know. I note in the fourth paragraph you raised the question as to whether quoting $2 mill base, La Salle, was agreeable "with our present Code of quoting to name the mill price." Now, this indicates that it was submitted prior to the adoption of the Code, the Code of Fair Competition, December, 1933, Mr. Postelle. What did you mean when you used the language "Present Code of quoting"?

A. That is a typographical error. That is "mode" or "method."

Q. It is what?

A. It would comply with our mode or method of quoting at that time.

Q. Mode?

A. Mode, yes. There was no such thing as code.

25052 The witness identified Resp. Ex. 821 as part of Alpha's work sheet in connection with the proposal referred to in Com. Ex. 789, which gives the land grant rate from Alpha's mill at Phoenixville, La Salle and also from a number of competitive mills. This work sheet was made up by Mr. Bethune. The work sheet was used by witness in preparation for the bid. The memorandum at the bottom of Resp. Ex. 821 "f.o.b. Phoenixville, Ala., $.4758705" is in Mr. Shaw's handwriting. It means

25053 that that is the base figure per bag. This proposal asks for prices on a per bag basis, and this figure is also shown in the Government's Exhibit 789, under Item 4, which is Alpha's bid. That is one-fourth the barrel price that Alpha was using and the figure was inserted in Alpha's bid.

Examination on Voir Dire by Mr. Wooden.

Q. What are the names of the towns that appear on here, and from what source did you obtain the information set forth opposite each town?

A. This is a list of the land-grant rates obtained from the U. S. Engineers' Office on a previous letting from Phoenixville, Speeds, Kosmos, Mitchell, Boyles, Marquette, La Salle, Prospect Hill, Richard City, City, Chattanooga, and Leeds.

Q. Were all those points basing points?

A. Well, I don't remember that. I know—I can tell from my record or card at that town what base we were

using at that time, what base figure, so far as that destination. They undoubtedly were.

25054 *Direct Examination by Mr. Leisure (resumed).*

Q. Were they all points of shipment or possible points of shipment of cement?

A. Yes, sir.

(RESP. EX. 821 was offered and received in evidence.)

The witness identified Resp. Ex. 822 as an original letter from Mr. Oscar Hatter, sales statistician at Alpha's Eastern [Easton?] Pennsylvania office, acknowledging Birmingham's letter of August 17, with instructions that they could use the base of $2.00 at the La Salle Mill that they had recommended. Witness used that letter in preparing the bid on this letting.

25055 (RESP. EX. 822 was offered and received in evidence.)

The witness identified Resp. Ex. 823 as a memorandum in his handwriting showing the price Alpha would use in bidding to the Government, using the land grant rate in connection with LaSalle.

Examination On Voir Dire By Mr. Wooden.

25056 The f.o.b. price referred to is f.o.b. Nashville based on the mill price [and] the Government land grant rate. Nashville is the delivering point. In other words, Alpha was quoting a mill price, "but that is the figure that was made, cost to the Government".

(RESP. EX. 823 was offered and received in evidence.)

The witness identified Resp. Ex. 824 as a memorandum from Mr. P. T. Scott, who was in Alpha's employ at that time as a salesman in Tennessee, in connection with this particular bid. It is a recommendation to Birmingham that, if it can, to possibly swing its Birmingham or Phoenixville bid to meet the LaSalle price of $1.75

25057 in paper. As witness remembers that proposal, he thinks the date is August 31, 1933. The memorandum on the bottom of Resp. Ex. 824 shows that Mr. Scott talked to Mr. Coogan and advised that his recommendation would be okay.

25058 (RESP. EX. 824 was offered and received in evidence.)

The witness identified Resp. Ex. 825 as a letter written by J. J. Bethune, in Alpha's Birmingham office, to Mr. Coogan, referring to a telephone conversation with Mr. Scott, who was in Nashville at that time, in regard to his conversation with Mr. Buck, purchasing agent for the United States Engineers' Office. It was in reference to this bid, quoting new land grant rates, that Mr. Buck advised Mr. Scott that they (United States Engineers' Office) had. This letter, as witness reads it here, refers to the proposal that had already been made. In other words, Alpha had the order.

25059 J. J. Bethune is Alpha's traffic manager, and while he has no title of assistant, he is practically witness' assistant in the Birmingham office.

Q. Now, as I understood you a moment ago, I understood you to say that this letter was written on August 31, 1933, with reference to this bid put in by the Commission, Commission's Exhibit 789.

25060 A. It was.

Q. Is that correct?

A. Yes.

Q. Now, will you tell us whether or not the information contained in this letter by J. J. Bethune, dated August 31, 1933, was used in any way by you in making up the bid in question (showing paper to witness)? Please notice that I am saying the information contained in that letter.

A. It was; it was.

25062 Q. Mr. Postelle, I show you Respondents' Exhibits 826 and 827 and ask you if you know what they are.

25064 A. These two exhibits, Respondents' Exhibits 826 and 827, is a computation made up by Mr. Bethune of land-grant rates used in connection with this bid for Nashville, Tenn., for the United States Army Engineer's Office.

Trial Examiner Norwood: What bid is that? Is it an exhibit?

The Witness: In connection with Government's Exhibit 789.

Trial Examiner Norwood: Now, Mr. Bethune being your assistant—

The Witness: Traffic manager and assistant; yes, sir.

25065 By Mr. Leisure:

Q. Can you identify Respondents' Exhibit 828, for identification, please?

A. That's an additional computation sheet used in connection with this bid and referred to in the letter from Mr. Bethune to Mr. Coogan.

25068 The computation of these land-grant rates is very simple. In other words, I know definitely how Mr. Bethune figured, because I figure a lot of them myself. We get those land-grant rates from the U. S. Engineer's Office on every bid that they have made, practically, and also from other sources, and we then go through the physical process which is outlined on this memorandum of making up our bid, and I will be very glad to show how that is done, how we arrive at it.

As an example, take the rate mentioned of .11606, which I believe in referring to the—again to the computations in the land-grant rate from Phoenixville,—and this may sound silly, of course,—but the way we work it in the Birmingham office, we multiply that by two. In reality, of course, 25069 it is really twenty, because we are transferring it to a per ton basis, and we get our ton figure, and again multiply, seemingly by two, to bring it down to the lowest decimal or a per barrel figure.

We take that land-grant rate from our mill, and the land grants from all of the other mills that we have obtained from the Government, and we take the lowest base figure that we have found in the field, and which is shown by our regular running record card,—we take that base figure and add that to the land-grant rate obtained for that particular base figure, and then we subtract from that the land-grant rate which we find from our own plant, to give us the figure that we use to meet this competition.

25071 Q. Let me show you Respondents' Exhibits 825, 826, 827, and 828. I want to ask you whether these were all made in the regular course of business at the time—let me take the first three at first: 826, 827, and 828. Tell us whether or not those were made in the regular course of business by Mr. Bethune with respect to the Commission's Exhibit 789?

A. They were.

Q. Did you participate in each step of this, and can you testify that they are correct?

A. I can.

Q. And as to Exhibit 825, I think you have already told us that the information contained in this letter was used by you in making up the bid.

A. The information in the second paragraph refers precisely to the manner in which we made up our bid in connection with this letter.

Trial Examiner Norwood: What was the occasion of his writing a letter and explaining to you how this paper was made.

The Witness: Well, in this particular case, Your Honor, we explained how we made up our bid and let Mr.
25072 Coogan know the circumstances and the net involved in order to get his consent to changing it from LaSalle to Phoenixville.

25080 (RESP. EXS. 826, 827, and 828 were offered and received in evidence.)

25083 Brooklyn, N. Y.,
October 18, 1939.

25084 CHARLES P. POSTELLE thereupon resumed the stand and testified further as follows:

Direct Examination by Mr. Leisure (Continued).

25085 Q. (Indicating.) I show you Respondents' Exhibit 829-A, for identification, and ask you if you know what it is?

A. (Witness examines document.) This is the office copy of the bid as submitted by the Birmingham office in connection with this Nashville bid referred to.

25089 (RESP. EX. 829-A, 829-B, and 829-C was offered and received in evidence.)

25090 Q. Mr. Postelle, will you look at Respondents' Exhibit 830 and tell us what it is, please?

A. This is the Birmingham office card of our commercial price records for Nashville, Tenn., from March 2, 1931, to September 3, 1938.

25099 (RESP. EX. 830 was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Postelle, I want to call your attention to a Commission exhibit, 182, which is an abstract of bids received

25100 by the Engineer's Office at Vicksburg, Miss., on June 12, 1928.

Did your company bid on that (handing document to witness)?

A: Yes, sir.

The witness identified Resp. Ex. 831 as the original undated telegram from Mr. Coogan to Birmingham in regard to this contemplated proposal, asking Alpha to give him information and wire what price it would figure f.o.b. Birmingham for the job. Witness received that prior to his submitting a bid on that lettering. He used Mr. Coogan's telegram to figure up the prices on Alpha's bid and he followed Mr. Coogan's instructions.

25102 (RESP. EX. 831, was offered and received in evidence.)

25103 The witness identified Resp. Ex. 832 as a copy of Alpha's letter of June 5, 1928, addressed to Mr. Coogan, attaching Alpha's bid on 120,000 barrels for the Third Mississippi River District, to be opened at Pittsburgh on June 12, 1928; Resp. Ex. 833 A as Alpha's office copy of the bid which Alpha submitted in connection with the letter just referred to to Mr. Coogan; Resp. Ex. 834 as specifications received from the United States

25104 Engineer's Office, giving information to bidders in connection with this bid; also a copy of the standard government form bid.

Examination On Voir Dire by Mr. Wooden:

At the time of this correspondence the witness was assistant sales manager of Alpha's Birmingham office. The work on this correspondence was actually done by him at the time.

25105 Trial Examiner Norwood: (Interposing) Who was Mr. McCurdy,—one of your men?

The Witness: Mr. McCurdy had the title at that time as sales manager of the Alpha Company, but had already resigned.

25106 Mr. Porter: It might be well to put on the record, Your Honor, that Mr. McCurdy is now deceased.

The Witness: Mr. McCurdy, due to the death of his wife, at that time had resigned, and wanted to retire from business, and he stayed there for a few months after

that letter was written, though. The actual work was done by me.

25112 (RESP. EXS. 833-A, 833-B, 834-A, 834-B, 834-C, 834-D, and 834-E, were offered and received in evidence.)

25113 By Mr. Leisure:

Q. Mr. Postelle, can you identify Respondents' Exhibit 835?

25115 A. This Exhibit 835 is a copy of our telegram of June 7 sent to Mr. Coogan at Easton in connection with the bid which he had wired us about and which I testified about, and which we had made up on his instructions, and we were asking him to make certain corrections.

Q. On Exhibit 833-A and B, I notice on the second page, on 833-B, there are certain pencil figures. Do you know what they are?

A. This Exhibit 833-B is a copy of our original bid which has been corrected as we found after sending the bid to Mr. Coogan, that we had made an error on the way the bid was made up.

Q. What was the error? You say you made an error.

A. In the original bid which we sent to him, on the column which we thought was the correct column, shows a price at our mill of 1.83286 or a total of 219.943.20. We found that due to the peculiar wording of the bid, that we had made a mistake and that instead of putting in

25116 this figure just referred to, that the bid was asking for a deduction, and so we made the correction on our bid and copy.

Q. Did that correction have anything to do with the telegram you have just been asked to identify; if so, what, 835?

A. This 835 exhibit shows that we had, as I just testified, made up the bid, or computations, and made up the bid and sent them to Mr. Coogan for his signature and O. K. And the telegram which we sent to Mr. Coogan on June 7 was calling his attention to the error that we made in the bid and asking him to change the figures shown.

Q. Were the figures so changed?

A. The figures were so changed, and this is the reason, though, we have made the correction on our copy of 833-B.

Q. That is, because of the telegram?
A. Because of the telegram.

Examination On Voir Dire By Mr. Wooden.

Q. Do you know, Mr. Postelle, the basis of the
25117 sender of the telegram's statement about understanding what should have been quoted?
A. It is very evident, as I see it, from the wording of the telegram, that he understands in looking over the specifications that he should name a certain deduction rather than the price which we had given him.

By Mr. Wooden:

Q. Was that telegram sent by Mr. Browder?
A. Why, yes, on my directions just like the rest of the bid was made up.
25118 (RESP. EX. 835, was offered and received in evidence.)

Direct Examination (Resumed) By Mr. Leisure.

Q. Mr. Postelle, with regard to Mr. Wooden's question, did you refer to the 834 exhibit, the third paragraph there? Is that the deduction you had reference to?
A. That is the deduction, yes.
Q. Yes?
A. Most of these bids are worded differently than this, and it was natural that we would be making our bid figure out the price instead of on the way the specifications were worded. And in view of the fact that our bid had been sent to Easton for Mr. Coogan's signature, because this bid specified it to be signed by an officer of the Alpha Company, we asked him to return the bid to us after it had been signed and O. K.'d; and we were afraid that after we had discovered that we had made this error, that we might not be able to get the change in time. That is the reason for the telegram.
Q. You say you sent the bid to Mr. Coogan. Do you refer to Exhibit 835?
A. Yes, sir.
Q. I think you have already told us that you enclosed it with Respondents' Exhibit 832, for identification?

A. Yes, sir; our letter of June 4. Respondents'
25119 Exhibit 832, was the letter that was attached to this bid which we sent to Mr. Coogan for execution and approval.

Q. Mr. Postelle, can you identify Respondents' Exhibit 836?

A. This is our Birmingham office copy card, which we used for our commercial prices for Greenville, Miss.

Q. You say it is the card that you used at Greenville, Mr. Postelle. Did you use it in any way in connection with this bid?

A. Well, not that particular or identical card. As I testified yesterday, this particular card was not in use in our office until several years after Alpha bought
25120 the plant. Before that time we kept, however, an identical system on a loose-leaf—in a loose-leaf book, and I can testify to the fact that this is the correct information on our commercial prices for Greenville over that period.

(RESP. EX. 836 was offered and received in evidence.)

25121 The witness identified Resp. Ex. 837 as a telegram dated June 11 that Alpha sent to Mr. Coogan in connection with the bid which witness has just testified to, calling Mr. Coogan's attention to the desire of the government for a bid f.o.b. barge in addition to the bid which had been submitted. In view of the short time elapsing after Alpha had received this information, and the time that Alpha had sent the proposal to Mr. Coogan, Alpha wired Mr. Coogan to find out if Alpha should bid on that basis; Resp. Ex. 838 as Mr. Coogan's letter of June 12 acknowledging Alpha's telegram which Mr. Coogan had received on that date, and advising that
25122 it would not be practical for Alpha to quote on a barge basis at Greenville, Mississippi, as the only way that Alpha could possibly ship by water would be from a mill that was so far away that it would be unattractive.

(RESP. EXS. 837 and 838 were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Postelle, in the last paragraph of Respondents' Exhibit 832, for identification, there is a reference to cer-

tain statements showing how certain figures were arrived at.

Can you tell me when and under what circumstances Respondents' Exhibits 839 and 840 came into being?

25123 In other words, can you tell us whether—

Q. Just tell us what it is and we will have it explained after it is offered in evidence.

A. This, as I explained, is the computation which I made up in connection with this proposal, and Respondents' Exhibit 840 is further work sheet—is further work sheet made up in the Birmingham office in connection with the additional correspondence and corrections.

Q. Also with reference to this particular bid?

25124 A. With reference to that bid.

Trial Examiner Norwood: Is that the original information from which you made the statement referred to in Respondents' Exhibit 832?

The Witness: Yes, sir.

Examination On Voire Dire By Mr. Wooden.

Q. Are both of these papers, marked Respondents' Exhibits 839 and 840, wholly in your handwriting?

A. No, sir.

Q. Whose handwriting are they in?

A. May I see it again?

Q. (Handing document to witness.)

A. Respondents' Exhibit 839, including even the doodling, is all in my handwriting. Respondents' Exhibit 840 is Mr. Browder's.

Q. On both sides?

A. Yes, sir.

Q. Are you able to—

A. (Interposing) The information on the back

25125 of this Respondents' Exhibit 840, however, has no connection with this bid, and it just seems to be some figuring that Mr. Browder was doing.

Q. Are you able to explain the entire method that was employed in the calculations appearing on those papers?

A. I can,—I was just beginning to do that.

Q. I just want to know whether you are able to.

A. (Witness makes no response.)

Q. Do you know what the information placed on the

back of one of them by Mr. Browder that has nothing to do with the bid itself—what it does relate to?

A. I do not. It must have been some figuring that he was doing from a telephone call with probably one of the salesmen.

25127 The Witness: I just discovered in looking over these papers that on the original worksheet where the price is made up, and which I would be very

25128 glad to show how it is made—

Mr. Porter: Give the number of the exhibit.

Trial Examiner Norwood: Yes.

The Witness: Respondents' Exhibit 839 shows that on the reverse side are, identically the same, figures made by me that Mr. Browder has made.

(RESP. EXS. 832, 839-A, 839-B, and 840 were offered and received in evidence.)

By Mr. Leisure:

Q. Will you explain how those were used?

A. As I started to explain a few moments ago on this Exhibit 839, one original column shows on this worksheet. I took the base figures, which will be found on this Greenville price card which we were using at that time, of $1.85, and to that I added the land-grant rate from Boyles, which is shown at .1285961 per hundred, and which I reduced to a per-barrel basis on the computations which I made yesterday, on the same basis, of .488665, adding this

25129 land grant to the base figure we were using at Boyles, which was used by Lone Star and Lehigh at that point. It gave a cost to the Government of 2.33866.

From this figure we deducted the Phoenixville land-grant rate, which we added, of .1331061 per hundred, and which we changed to the per-barrel rate of .5058, deducting this gave us a figure at Leeds—I mean, pardon—I see that here—a figure at Phoenixville of 1.83286, and this was the original bid which was shown on these copies as made up. We then, after finding the mistake that we had made, took this—the commercial price shown on the price card of 2.55, deducted this 1.83286 from it, leaving a figure of .71714, which gave us the corrected figure shown on the copy of our bid.

25130 Q. Now, after these bids were submitted, Mr. Postelle, did you receive from the Government any

abstract of the bids and the award, as shown by Commission's Exhibit 182-A?

A. Yes, sir.

Q. (Handing document to witness): Now, as to the figuring of this bid, can you explain your reasons for taking into account the land-grant rates from Birmingham, Phoenixville, Boyles, and North Birmingham? I
25131 notice the abstract shows that the bids were also received from mills at New Orleans, and Cape Girardeaux, and Richard City, Ragland.

A. Well, we had found over quite a long experience that on account of the peculiar situation as to land grants in the Alabama district, particularly in Alabama and over to Mississippi, that we were just usually wasting our time to find land-grant rates for more than the four or five mills around the Birmingham area.

Q. What do you mean by that? Why was it a waste of time?

A. Well, we had such low land-grant rates as compared to mills from other users,—the land-grant rates from the Birmingham area, all we have found involved over a long period of years, that they are lower than practically any other mill in the Southeast.

Q. Well, now, before the opening of the bids on this letting, did you have any communication with your competitors as to what your prices were, or would be on your bid?

A. Positively none.

Q. Or as to what prices they would bid?

A. No, sir.

Q. I want to call your attention to another Commission's exhibit now, Mr. Postelle, which is an abstract of bids received at Memphis by the U. S. Engineer's Office on July 26, 1928.

A. Yes, sir.

25132 Q. Did your company bid on that letting (showing paper to witness)?

Trial Examiner Norwood: What is that exhibit number?

Mr. Leisure: 769.

Trial Examiner Norwood: Commission's?

Mr. Leisure: Commission's exhibit.

A. Yes, we submitted a bid, but this exhibit is incorrect, as to the way it came in.

25133 Q. Mr. Postelle, you have told us what Mr. Brow-

der's connection was in 1933. What was his connection with the company in 1928?

A. In 1928 he had the same connection as he did in 1933, as traffic manager.

The witness identified Resp. Ex. 841 as a letter of July 14 from Mr. Browder to Mr. Coogan, including an
25134 appraisal received from the War Department, First and Second District of Memphis, in connection with Government's Exhibit 769, which is a proposal to be opened on July 26, 1928; Resp. Ex. 842 as a list of land grant rates prepared by Mr. Browder as Alpha's work sheet, in connection with this bid.

25141 The witness identified Resp. Ex. 841 as a letter from Mr. Browder to Mr. Coogan of July 14 that witness saw at the time it was made up and written
25142 under witness' instructions.

25153 (RESP. EXS. 841 and 842 were offered and received in evidence.)

By Mr. Leisure:

Q. Will you look at Respondents' Exhibit 842 and explain the computation thereon?

First, what does it show?

A. Respondents' Exhibit No. 842 is a list of land-grant rates which we obtained from the Government on previous lettings, the U. S. Engineer's Office, in connection with Cairo and Memphis, Tenn. These rates which we obtained after every letting, and, incidentally, the lettings which we received at that time from the Engineer's Office, were very numerous. We obtained these land-grant rates and made—this is our work sheet showing that we made our computation from that.

Q. Mr. Postelle, I show you Respondents' Ex-
25154 hibit 844; and ask you if you can identify it (handing document to witness)?

A. This Exhibit No. 844 is a letter from our Birmingham office to Mr. Coogan in connection with this Government's Exhibit number.

Trial Examiner Norwood: It is a Commission exhibit.

The Witness: Commission's Exhibit 769.

A. Giving our recommendations as to how we should bid, and reporting to the effect that we were attaching statements of land-grant rates which are on this sheet, Respondents' Exhibit 842 (indicating).

25167 *Direct Examination (Continued) By Mr. Leisure.*

Q. Mr. Postelle, this morning there was considerable discussion as to what happens when you get these bids, as to what your position is.

Suppose you just tell us, briefly as you can, what does happen in your office? When I say "what does
26168 happen" I mean what has happened. How do you go about—

A. What do you mean, the actual physical—

Q. When you receive proposals, just what do you do?

A. Well, Mr. Leisure, on bids in connection with proposals, such as we have had here today, in particular, because we have never received a proposal in the Birmingham office from the United States Engineer's Office, to my recollection, that I did not personally have considerable to do with.

When the proposal is received, whether it might be Mr. Browder, or Mr. Bethune, we together sat down at the desk and made out these bids. We get the land-grant rates which we have on file from practically every letting that has ever been held in the South; we bid on it. We got the land-grant rates from that record with an abstract, as soon as we could.

Q. When you used those names it does not make the record clear as to what the machinery of making them up is.

You, as sales manager, for the point where the bid is received, sit down with your—what is that—

A. Traffic manager or traffic clerk—I sit down at the desk with him and we get out these rates which we have on file, at the previous lettings in most cases, a great number of times from land-grant rates that we have established ourselves or have obtained from the railroads.

Q. You say "or have obtained from the railroads,"—
do you or do you not instruct your traffic manager
25169 to bring those to the table, as you have said, so that you may figure?

A. I so instruct him, I so instruct him on each individual letting, such as we have discussed with U. S. Engineers, and we actually sit down together and work out the basis on which we will bid, or either ask for instructions from Mr. Coogan as to how we shall bid.

Q. Now, with respect to that method, was it followed

with regard to the bid which we have just been discussing, Commission's Exhibit 769?

A. It absolutely was.

Q. Will you look at Respondents' Exhibit 844 and tell us the circumstances under which that was written, if you know (indicating)?

A. That was—

Q. Tell us, first, was it written in connection with this bid?

A. This was the letter that was written in connection with this bid shown as Exhibit 844, prepared under my instructions in the Birmingham office, after we had
25170 actually made up the physical information with reference to the preparation of this bid.

Q. Now, as I understand you, this Respondents' Exhibit 844 was prepared under your direct supervision. Do you know whether or not it correctly states what it purports to state?

A. It does correctly state it.

Q. And it was made in the regular course of business at that time?

A. Absolutely.

25171 The witness identified Resp. Ex. 846 as a telegram from Mr. Coogan asking Alpha to wire him the figures to use in connection with this letting. This pencil memorandum on the bottom is a proposed telegram which witness instructed Mr. Browder to send to Mr. Coogan in connection with this bid. Mr. Browder did send that telegram. The witness identified Resp. Ex. 845 as a copy of the telegram which is identical with the pencil memorandum on the other telegram, giving Mr. Coogan the information asked for; Resp. Ex. 847 as a letter from Easton, in connection with this proposal, and giving Alpha information as to why it did not follow all of the
25172 recommendations that they made. The letter is signed by the general sales manager at that time, Thomas M. Dyer.

25173 (RESP. EXS. 845, 846, and 847 were offered and received in evidence.)

By Mr. Leisure:

25174 Q. Mr. Postelle, I neglected to ask you how 842 is connected, if at all, with Exhibit 844.

A. May I see 842? Oh, this. I beg your parden.

Answering your question in regard to Exhibit No. 844 as to how this letter ties in with Exhibit No. 842, this letter is actually the essence of the information that we have made up, because we have taken these land-grant rates and recommended to Mr. Coogan that he take the lowest base figure that we found in the district, which would be Boyles, Ala., and recommended that we use a base of $1.85, which was the figure we were using at that time, and the land-grant rate from Boyles was the lowest land-grant rate. And in view of the fact that the land-grant rates from Phoenixville was the identical rate as at Boyles, we recommended that we put a bid in on the basis of $1.85 at our mill.

Q. Have you told us whether 842 was made up by Mr. Browder at the time?

A. These land-grant rates, as shown on Exhibit No. 842, are the land-grant rates that we had obtained from previous lettings, and which we sat down together and figured out to find out that Boyles was the lowest land-grant rate, and that Phoenixville was the same, .147908, Cairo, and .118675 to Memphis from both Boyles and Phoenixville.

Q. And Exhibit 842, do I understand you to say that it was made up in the regular course of business 25175 with respect to that bid?

A. It was.

Q. At the time?

A. At the time.

Q. And can you vouch for the accuracy of that?

A. Absolutely.

Q. I would like to call your attention to Commission's Exhibit 772, Mr. Postelle, being an abstract of bids received by the War Department at Memphis, Tenn., on December 17, 1928.

Did your company bid on that letting?

A. We did.

Q. That seems to be a December letting. As of what time was Commissions' Exhibit 769, do you know, Mr. Postelle?

A. Commission's Exhibit 769 was made—of, rather, it was opened on July 26, 1928.

Q. Now, as to the later letting, the December letting, Commission's Exhibit 772, did you have anything to do with the making up of that bid?

A. I did.

Q. Can you tell us what you did in that connection?

A. In view of the fact that there was no change in the land-grant rates for these points in question, since our previous bid, we put in an identical bid as we did on July 26th.

Q. Did you have any agreement with any of your competitors that you would do that?

25176 Absolutely not.

Q. In that way?

Did you have any communication with them in any respect with regard to that?

A. Absolutely not. All of these, I might say,—these land-grant rates,—as long as I can remember, have been subject to inspection from the U. S. Engineer's Office.

Q. I will ask you as to whether you had any communication as to what you would do? Did you have any communication with them? as to what they would do?

A. Absolutely not.

Q. Let me call your attention to Commission's Exhibit 771, which is an abstract of bids received by the War Department at Memphis on June 3, 1929.

Did your company bid on that letting?

A. We did.

25177 The witness identified Resp. Ex. 848 as a letter he wrote to Lieut. Col. Wilby in connection with the proposed cement purchase that would be called for at a later date, and has absolutely all to do with the letting, and explained Alpha's policy and position in reference to the question of tested cement; Resp. Ex. 849 as a letter from Lieut. Col. Wilby addressed to Alpha on April 3 at Louisville, Kentucky, which is an error, and forwarded to Alpha by the Post Office Department, making inquiries in regard to the question of tested cement referred to in Resp. Ex. 848.

25178 (RESP. EXS. 848 and 849 were offered and received in evidence.)

By Mr. Leisure:

Q. Will you tell us, Mr. Postelle, what connection, if any, Respondents' Exhibit 850 had with this same letting?

A. What was that question?

(Last question read.)

A. Respondents' Exhibit 850 is directly in connection

with the two letters referred to, a letter written by me to Mr. Coogan, explaining the action that I have taken, and asking for advice.

25179 Q. And as to Respondents' Exhibit No. 851, what did that have to do with this letting (handing document to witness)?

A. Respondents' Exhibit No. 851 is directly in connection with the same subject that we have just referred to on the three previous exhibits, is a letter from Mr. Coogan to Birmingham suggesting that we make the quotation to—

Trial Examiner Norwood (Interposing): Well, don't tell us what is in it.

The Witness: It is about the same matter, and following the advice that we had asked for, or, rather, the recommendations we had made.

25180 (RESP. EXS. 850 and 851 were offered and received in evidence.)

The witness identified Resp. Ex. 852 as a telegram in connection with the bid just referred to, asking for advice from Mr. Coogan as to a change in Alpha's bid, since it had not bid exactly in accordance with specifications, and asking if it should correct the bid. The 25181 pencil memorandum in the right hand corner is from the confirmation of a telephone call from Mr. Coogan to Birmingham instructing that it should let its bid stand as sent in, without change.

25188 Mr. Paulson: We are concerned with whether 25189 or not there was conspiracy or collusion in the making of prices in this industry, and we can't learn that from somebody who doesn't get either one or the other of the two factors that make up price. We are not getting anywhere in the case. Our objection is that this is needless, superfluous, and immaterial, and we want to get down to brass tacks.

Trial Examiner Norwood: Don't you think that if we let the Respondents get through these routine matters that maybe we will get the meat of it a little quicker?

Mr. Leisure: Yes. If we are puting in a weak case I should think that would please the Commission.

Mr. Paulson: It doesn't please us at all.

Mr. Leisure: If it is weak.

Mr. Paulson: We have full confidence in our case. We don't care what—

Mr. Wooden: I just want to say I think it is a weak case, but the very weakness is the thing that leads it to be dragged on interminably, and that is the thing I am concerned with.

Mr. Leisure: I don't think it lies in the mouth of a man who took two years to put in his case to start talking that way. We have been less than two months now.

Mr. Wooden: I am tired of that two-year business. I have heard that "two years" before. It isn't two
25190 years yet.

Mr. Leisure: I don't think it lies in his mouth to raise that issue yet. It is a little premature.

Mr. Wooden: I have heard that "two-year" business for months.

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: I think we might just as well take these exhibits in. I will give you warning that there is going to be a stopping place on them, that you have put in enough of them to illustrate your method of pricing, and I think the Counsel for the Commission are right, technically, about the matter, but we will let these in for study, and if there is anything that I don't fully understand about them, or that indicate that they should be taken out, I will entertain a motion later to withdraw them.

So we will take in Exhibits 844 and 852. Overrule the objection.

(RESP. EXS. 844 and 852 were offered and received in evidence.)

Trial Examiner Norwood: Now, those letters from these third parties there are letters that passed in due course of a business?

25191 Mr. Leisure: That is right.

Trial Examiner Norwood: All right. They are such letters as have been urged here before as coming under that new statute. I am not saying that they do or whether they do not. I will leave that to the Commission. We will let them in.

Mr. Leisure: Shall I proceed, Your Honor?

Trial Examiner Norwood: Yes.

By Mr. Leisure:

Q. Mr. Postelle, can you identify Respondents' Exhibits 853-A, B, and C?

A. Yes. This Respondents' Exhibit 853-A, B, and C is our Birmingham office work sheet made up in connection with this bid.

Q. Before we go on with that I neglected to ask you with respect to the previous exhibits, 850, 851, and 852, just what happened there. We offered these exhibits,
25192 but you didn't tell us what happened with respect to making up that bid. Just tell us what happened, if you had anything to do with it.

A. This Government bid, in addition to asking for bids on special handling in the way of testing that was unusual to the previous bid, also asked for special strength. In other words, that the seven-day tensile strength be reached in four days, which was contrary to general Government specification. In accordance with these papers that I have identified, the correspondence between Birmingham and Mr. Coogan and back, he told us to make our bid up on our regular cement in the regular way, and this Exhibit No. 853 shows how we made the bid.

We took the base figure which we found to be the lowest in connection with this proposal, which was the rate from Boyles to Hickman, Ky., and in that connection I might say that on these proposals they had been using two or three different destinations up and down the river, but we were giving the Government the benefit of the lowest one of those destinations, which we found to be Hickman, Ky.

We took the Boyles land-grant rate of .415775 and added it to the per-bag price on the base figure that we used at Boyles, which was .4375, which gave us a per-bag price at Hickman of .553275. To this we added the Phoenixville—I beg your pardon. Change that. To this we subtracted—from this we subtracted the Phoenixville land-
25193 grant rate of .137856, which gave us the price that we wanted to quote of .415419, which was on regular specified—or, rather, regular specifications A. S. T. M., Government specifications, not taking into consideration these special requirements of the tensile strength and testing. And the figure that we have used of .41549 is the figure that we put in our bid, and which is shown on the abstract.

The witness identified Resp. Ex. 854 A to E as an actual copy of the Birmingham bid made up under his direction and quoting to the Government Engineers at Memphis the figure which witness just mentioned in regard to the

previous exhibit of 415419 per sack. Resp. Exs. 853 and 854 were both made up under his direct supervision in the regular course of business and witness vouches for the correctness of both of them.

25194 (RESP. EXS. 853-A, 853-B, 853-C, and 854-A to 854-E, both inclusive, were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Postelle, I show you Respondents' Exhibit 855 and ask you if you can identify it.

A. Exhibit No. 855-A and B is an exact copy of a letter prepared under my supervision and at the request of Mr. Coogan asking us to submit certain information in regard to this bid.

25196 Trial Examiner Norwood: I have thought very seriously about this whole situation since you mentioned it this morning; and I think that we might just as well—I think we can get along faster, and I think we might as well let these papers in for study conditioned as Mr. Leisure has conditioned them.

I shall receive them in evidence. Overrule the objection and the Counsel for the Commission have their exceptions.

Mr. Wooden: Of course, Your Honor, that is not the only objection to this whole line of testimony, but, in addition, it is simply piling up proof over and over again of what is already well established and considered by both sides as to the method of calculation employed.

Trial Examiner Norwood: Well, this illustrates the method of this one company here, or tends to illustrate it, and I think maybe that should clarify the picture. Received as marked. The Commission has an exception.

25197 (RESP. EX. 855-A and 855-B was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Postelle, I notice in this letter a statement about "d sregarding the Marquette quotation." That is in the fourth paragraph of the letter (indicating); do you know what that means?

25198 A. The information contained in the fourth paragraph in Respondents' Exhibit 855, I definitely remember,—and it is merely a typographical error.

Q. What should it be?

A. The correct wording was "Disregarding the Marquette competition."

Q. And it is written how?

Trial Examiner Norwood: Let me see it.

A. It is written "Marquette quotation."

Q. It is written "quotation" instead of "competition"?

A. Yes, and the correct wording was "disregarding the Marquette competition," which I distinctly remember as being water competition, which we did not attempt to meet.

25200 Q. Will you tell us, Mr. Postelle,—you say Respondents' Exhibit 855 was written at your direction (indicating); what was the purpose of the fourth paragraph?

A. The purpose of the fourth paragraph was to outline the fact or point out the fact that we could not meet—by not having the physical equipment—the competition that we had found on a previous letting, and several previous lettings, from Marquette, and we felt that the information that we had from the previous letting as to land-grant rates from Boyles, that by using this computation of our work sheets, as I pointed out, might get us the business.

As a matter of fact—

Q. Before your— Oh, excuse me.

A. If you will let me finish this.

As a matter of fact, in this particular letting which I remember distinctly, the Government had in mind three different points where they might use this cement,—Hickman, Ky., Cairo, Ill., or Memphis, Tenn.

You will pardon me if I go on—let me finish this and then I will finish my calculation there.

25201 In other words, as I pointed out, while there were three possible destinations that the Government might use, we found from a previous letting that the Government had awarded this on the basis of Hickman, Ky. So, in view of the fact that Hickman, Ky., was the possible place where the Government would take the cement, we took that point, and, incidentally, that gave the Government the benefit of the lowest land grant which they could possibly get, because there were three points involved, and we used that, that computation, to put in our bid, feeling confident that we would be able to meet that competition that had shown there before.

Q. Now, before doing that, let me ask you again whether you communicated in any way with your competitors as to what prices you would bid?

A. Absolutely not.

Q. I want to call your attention to another Commission's exhibit, being Commission's Exhibit No. 773, which is an abstract of bids received by the War Department at Vicksburg, Miss., on April 17, 1930.

Did your company bid on that letter (indicating document)?

A. We did.

25202 The witness identified Resp. Ex. 856 A to K as an actual copy kept in the Birmingham office of Alpha's bid in connection with this Government Exhibit 773 which was made up under his supervision.

Q. Now, that bid shows that you did not make any bid on the third alternate, f.o.b. Government warehouse, lock and dam No. 4, South Grand and Moulton Streets, Monroe, La., river shipment. Why was that, Mr. Postelle? Why did you not make any bid on that?

A. The reason we didn't bid on this alternate is because we had no facilities that would allow us to handle shipments by river or put cement in the Government warehouse. Our bid was made up purely and simply as a mill bid using land-grant rates, and on the second
25203 alternate, our commercial price, f.o.b. railroad switch.

(RESP. EXS. 856-A to 856-K, inclusive, were offered and received in evidence.)

By Mr. Leisure:

25204 Q. Mr. Postelle, Respondents' Exhibit 857 purports to be written by Mr. Gerstell. Who was Mr. Gerstell?

A. Mr. Gerstell is assistant to the general sales manager in the Easton office, in addition to being secretary to the company, and is directly assisting Mr. Coogan.

Q. I notice that exhibit is addressed to you. Can you tell us under what circumstances it was prepared?

A. This is a letter in reply to my letter to Mr. Coogan. This letter is dated May 6, in reply to my letter of April 21, in which we sent Mr. Coogan the tabulation of the bid at Monroe, La., from the U. S. Engineers. He was interested in our letter and asking us if we could throw any light on the prices received by several of our competitors.

Q. And under those circumstances this letter was written by Mr. Gerstell?

A. Yes, sir.

Q. 858, can you tell me what that is?

A. Well, before leaving Exhibit 857, I might say that I asked Mr. Browder to see me, which is shown on the letter, and asked him to come in and talk about that particular bid that we had made in this letter.

Q. You say "which is shown on the letter." Do you have reference to the pen memorandum in the lefthand corner?

A. Yes, sir; signed by me, instructing Mr. Browder to come into the office, and we then went over this
25205 tabulation of the bids received from the U. S. Engineer's Office at Monroe taken at Vicksburg, however. So this letter prepared under my direction, under Exhibit No. 858, gives our idea as to how our bid was made, and the possible construction made by our competitors. It shows that the base at—

Q. Now, before we get to that, then, this letter was written under your direction as you have just outlined?

A. Absolutely.

25211 (RESP. EXS. 857 and 858 were offered and received in evidence.)

By Mr. Leisure:

Q. Can you tell me, Mr. Postelle, as to Exhibit 858 where this information came from?

A. I think I can figure it out, if you give me—I mean, I can work it out to your satisfaction if you will give me time. Would you like for me to make out the computation as to how this was made up?

Q. Well, what I wanted to find out was whether you know from the information contained in the letter where it came from without working it out.

A. Well, it is shown very plainly on the Government's own exhibit as to what took place in the bidding.

25212 Q. Did you get a copy of that abstract?

A. We did.

Trial Examiner Norwood: What exhibit was that?

The Witness: Exhibit—Government's Exhibit 773.

A. I can testify to the fact that at no time, to my knowledge, on any Government letting on the Mississippi River did we fail to get an abstract of a letting through

our salesmen, or the man who was at the letting, whether he be a salesman, or myself. I attended many of those in person.

By Mr. Leisure:

Q. Now, in directing Mr. Browder to write the letter, Respondents' Exhibit 858, did you or did you not take that information from a bid which you had before you?

A. We did. We took what we found as the base figure at that time in Birmingham, which was Lone Star, and was $2.10 per barrel, and to that we added the land-grant rate of .43244.

Q. Where did you get the land-grant rate from?

A. We got it from a previous Government exhibit, or abstract, I mean.

25218 The witness identified Resp. Ex. 859 as the Birmingham office copy of Alpha's regular commercial price card for Monroe, La., showing prices that Alpha has used at that point from May 1, 1928 to April 14, 1938, a period of ten years. That card was used in connection with this letter.

25225 (RESP. EX. 859 was offered and received in evidence.)

25230 Brooklyn, N. Y.,
October 19, 1939.

25231 CHARLES P. POSTELLE thereupon resumed the stand and testified further as follows:

Direct Examination (Continued) By Mr. Leisure.

Q. Mr. Postelle, I call your attention to Commission's Exhibit 776, being an abstract of bids received by the War Department at Vicksburg, Miss., on June 16, 1930,
25232 and I would like also at the same time to call your attention to Commission's Exhibit 184-K, which is another abstract on the same letting.

Will you tell us whether or not your company bid on that letting?

A. We did.

The witness identified Resp. Ex. 860 as a letter prepared under his direction in the Birmingham office to Mr. Coogan

in connection with proposals received from the United States Engineers at Vicksburg for opening on June 16, 1930, as shown on the Government's Exhibit No. 776, and telling Mr. Coogan how Alpha would make up its bid; Resp. Ex. 861 as a letter from Mr. Coogan addressed 25233 to him acknowledging this letter and instructing Alpha how to bid. With few exceptions, all letters of this nature, as witness testified, are written under his direction, and Mr. Coogan writes to witness because Mr. Coogan considers all of his letters as having come from witness.

(RESP. EXS. 860 and 861 were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Postelle, I show you Respondents' Exhibit 862, for identification, and ask you to tell us when and 25234 under what circumstances it was made up, if you know?

A. This is a Birmingham office work sheet under Respondents' Exhibit 862, made up under my direction in the Birmingham office, and giving the land-grant rates. May I have this other exhibit to refer to?

Q. Certainly (handing document to witness).

A. Using the land-grant rates at a previous letting, giving the base price used by our computation, and which was referred to in our letter to Mr. Coogan on May 28th, in which we told him just how our bid would be prepared.

Q. And do I understand from your testimony that this was made up at the time as part of your preparation in submitting the bids?

A. This was—this record was taken from information which we obtained from the previous letting in the U. S. Engineer's Office.

Q. And the computations thereon went in to making up your bid, as I understand your testimony?

A. Absolutely.

25235 (RESP. EX. 862 was offered and received in evidence.)

By Mr. Leisure:

Q. (Indicating) Mr. Postelle, can you identify Repondents' Exhibit 863-A to K?

A. 863-A to K is an identical copy of our bid, and covering all specifications as received from the United States

Engineer's Office to be opened on June 16, 1930, as shown in Government's Exhibit 776, and prepared under my direction.

25236 Q. Did you determine the price in arriving at it?

A. Yes, I did.

Q. Then, will you explain how you arrived at it? To make myself clear, Mr. Postelle, I am not asking you to do any computation, do you understand?

A. Yes.

Q. I just want you to tell us what you did, not to live through and actually do over again what you did at that time. I want you to tell us what you did, the other takes too much time.

A. Respondents' Exhibit 836 shows our regular going Greenville price card which we have used—and gives a record that we have used since May, 1928, until September, 1938, and taking the date thereon, the bid of June 16, which is November 25, 1929— Or, I beg your pardon, I looked on the wrong line, or something—

That is correct, after all—November 25, 1929, shows that our price at—our commercial price—at Greenville is $2.80 a barrel, using Birmingham $2.30 base, which is shown by our bid.

25241 Trial Examiner Norwood: I just want to ask one question: The original of that bid is not in evidence, is it?

Mr. Leisure: No, sir; it is not.

Trial Examiner Norwood: Now, that is the only point that I would have to decide, because there is nothing clearer than that the Respondents would have a right to put in the original bid or a copy thereof.

Mr. Leisure: Office copy.

Trial Examiner Norwood: That was included in this tabulation. Now, that is one reason the tabulations are received, and the reason for the condition of receiving the tabulations, that the supporting bids are given to the opposite side. For what purpose? For checking and for putting in the entire story with respect to their Respondents. That is the complete bid, if they want to put it in. I wouldn't have a right, and the court wouldn't have a right to deny the privilege of putting in this
25242 whole bid and explaining how they made it.

Mr. Wooden: Your Honor—

Mr. Leisure: There is no question about it.

Mr. Wooden: —I would beg to differ in that respect to this extent: That you would have the right, and any court would have the right to ask what is it that is being done here. Are you trying to controvert what has been put in, or are you simply supplementing it and showing the same thing that has already been shown? In other words, what issue is at stake here?

Trial Examiner Norwood: You know there is such a thing as a bid by way of confession and avoidance?

Mr. Wooden: Yes.

Trial Examiner Norwood: They might confess some of the facts and then explain them.

Mr. Wooden: They aren't even doing that, as I see it, in any way.

Trial Examiner Norwood: I think that is what they are doing. They are explaining these things.

Mr. Paulson: Let's have an offer of proof and see.

Trial Examiner Norwood: He has made his offer of proof.

Mr. Wooden: I merely say that this record big as it is now bids fair to be ten times as large when we get through.

23243 Mr. Leisure: We will cross that bridge when we get to it.

Trial Examiner Norwood: Let's not assume that they are going to waste time on this. In fact, I think I can guarantee that there is not so much time going to be wasted.

Mr. Leisure: On the question of wasting time, we would have been through all of this bid thing if we hadn't re-argued things that Your Honor ruled on early yesterday morning, re-argued them five or six times.

Trial Examiner Norwood: That point is settled, and the Commission has its exception all the way through on receiving these particular bids that are connected with the tabulations. I have no choice about that, I must take them in.

Objections overruled and the exhibit is received as marked.

(RESP. EX. 863-A to 863-K, inclusive, was offered and received in evidence.)

25244 By Mr. Leisure:

Q. Mr. Postelle, I show you Respondents' Exhibits 864 and 865-A and B, for identification, and ask you to explain what they are.

A. May I see our bid on this?

Q. Certainly (handing witness Respondents' Exhibit 863-A to K).

A. Do you just want these identified, or do you want me to go into the—

Q. I want you to explain what they are so I may offer them in evidence.

A. Respondents' Exhibit 865-A and B is our Birmingham office work sheet made up under my supervision and instructions, in connection with our proposal which was submitted to the United States Engineers' Office for
25245 June 16 letting, 1930. This work sheet shows how we found our price of 2.0799, which was the figure that we used under item 1, f.o.b. our mill at Phoenixville.

In determining this rate we found from a previous letting at that point, and the information given by our salesmen, which was obtained from the Engineer's Office, that the Lehigh Company and Lone Star, on their previous letting, had used a base of 2.097, which, together with their land-grant rate which we had established from that letting of .48906, gave the cost to the Government at Greenville destination of 2.58606.

Trial Examiner Norwood: Just describe the paper; that is best, but after it is in evidence he may look at it and explain it.

A. (Resumed) And this work sheet confirms
25246 the figures which we used as shown on Respondents' Exhibit 863-A, and how we followed the price—

By Mr. Leisure:

Q. That will be sufficient identification.

Now, will you tell us what the other figure is? Have you told us what it is—what is the number, please?

A. Respondents' Exhibit 864 is a letter from our salesman, Mr. McRoberts, who attended the letting of the United States Rubber Commission in connection with this Government letting of June 16, 1930.

Do you want me to give you the information?

Q. What you did, yes; if you have not already told us.

A. Well, he was following instructions, as I say, in

attending this letting, and he was reporting the bids received from quite a number of companies in line with our instructions.

Q. And that is represented on this Respondents' Exhibit 864 (indicating)?

A. Yes, sir.

25248 Q. Now, for what purpose do you ask a salesman to make up such a report as that for you?

A. We ask this information on all of those lettings, so that we will have on file the price bid by our competitors, so that we will know how the land grant rate is to apply, to make our base on future lettings.

(RESP. EXS. 864, 865-A and 865-B were offered and received in evidence.)

By Mr. Leisure:

Q. Now, as to this letting, did you have any communication with the Lehigh Company or the Lone Star Company as to how you would make up that bid?

A. Absolutely not.

Q. Either as to what you would do or what they would do?

A. None whatsoever.

Q. They are the principal competitors there. My same question applies—do you give the same answer as to any other competitor?

A. We absolutely gave no information to any 25249 competitor, nor did we receive any information from any competitor.

Q. Mr. Postelle, I now wish to call your attention to Commission's Exhibit 777-A and B, being an abstract of bids received by the War Department at Memphis, Tenn., on June 20, 1930 (indicating).

Did your company bid on that letting?

A. We did.

The witness identified Resp. Ex. 866 as a letter addressed to Mr. Coogan under his direction from the Birmingham office on June 5th informing Mr. Coogan about the 25250 proposal to be received by the United States Engineers' Office on June 20th, which is the proposal referred to in Government's Exhibit No. 777-A, calling Mr. Coogan's attention to the fact that there are quite a number of objectionable features in connection with this request for bids from the Government; Resp. Ex. 867-A

as a letter from Mr. Coogan addressed to him on this same subject; Resp. Ex. 867-B as an instrument in connection with this bid for the building of a testing laboratory, which was attached to Mr. Coogan's letter.

25250 (RESP. EXS. 866, 867-A and 867-B were offered and received in evidence.)

25254 The witness identified Resp. Ex. 868 as a letter to Mr. Coogan, prepared under his direction in connection with this bid, and in connection with the subject just referred to in the two previous letters; Resp. Ex. 869 as a copy of the blueprint furnished to Alpha by the United States Engineers' Office at Memphis, in connection with this same subject that has been discussed in these three previous exhibits.

25256 (RESP. EXS. 868 and 869 were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Postelle, can you identify Respondents' Exhibits 870-A and B?

A. Respondents' Exhibit 870-A and B is our
25257 Birmingham office work sheets made up under my direction, and with my help, giving the land-grant rates from the different mills that we figured might be competitive in this—in the way of land-grant rates for the different destinations which we also figured might be used in connection with this bid.

25258 (RESP. EX. 870-A and 870-B was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Postelle, on the first page there is written in red "December, 1928." Will you explain what that notation means?

A. The figures in red are land-grant rates that we had obtained from a previous letting in December, 1929,
25259 from the Government.

Q. Mr. Postelle, I show you Respondents' Exhibits 871-A to H, inclusive, and 872-A to F, inclusive, and ask you to tell us what they are. I would like also to have you tell us whether there is any connection between the two, and, if so, what it is.

Trial Examiner Norwood: Do you wish further time to look that over? I will call a recess.

The Witness: I think I can finish that, Your Honor.

Respondents' Exhibit No. 871-A is the bid, and the wording I gave there, that we originally intended to put in, in which we made certain stipulations in regard to the special requirements of the Government in regard to a testing laboratory, and in which we took exception to the special requirement in regard to tensile strength, and on which we originally intended to quote a price of 2.0126 per barrel at the mill, and 1.7626—wait a minute. Yes, there are two different items on here. One is 96,000 barrels at 2—

Trial Examiner Norwood: Well, now, just tell us what that is. Don't go into that yet.

A. (Continuing) Well, the other bid, Respondents' Exhibit 872-A is the Cunningham office copy of the proposal made up under my supervision and signed by me, and was the actual bid submitted on this letting of June 20, 1930, Government's Exhibit 777-A.

(RESP. EXS. 871-A to 871-H, inclusive, and 872-A to 872-F, inclusive, were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Postelle, I show you Respondents' Exhibits 871 and 872 and ask you to refer to them and refresh your recollection, if necessary, and tell us, just as briefly as you can, what you did with reference to making up those bids (handing documents to witness)?

First, let me ask you, had you finished telling us the difference between the two?

A. No, I had not.

Q. Will you continue?

A. May I ask a question in connection with that?

Trial Examiner Norwood: Yes.

The Witness: Do you want me to refer to the whole picture, and the previous correspondence?

By Mr. Leisure:

Q. No, I just want you to tell us, as briefly as you can, Mr. Postelle, when you were making these up as to what the difference was, and what you did. That is what I am really getting at, as to what happened at the time.

A. Well, answering your question, as to the difference between these two exhibits, Respondents' Exhibit No. 871-A, which I testified was originally made up and which we intended to send, was more or less—partly going along with the Government's request that we build a laboratory, but we did not get along with the idea of including that in the cost of the bid.

And this Exhibit No. 871-D, which is a rider attached to the bid, clearly explains how we would take care of this matter, that we would furnish the laboratory in accordance with their blueprints, but that the actual cost of building it—

Q. Well, that is in there, we won't take time to read that; it is in the exhibit. Just tell us what you did on the second.

A. On the second exhibit which we finally put in as our bid in connection with this proposal, as shown under Respondents' Exhibit No. 872-A, we decided to make no exception to the Article 15 with reference to testing on page 3, Exhibit 872-D, but to tell the Government that we would build this laboratory, and we added to the original price that we had figured what we estimated to be the cost of building such a laboratory, and then moving it as requested.

Q. I notice in this exhibit, 872-A to F, that the unit price named by you under items 1 and 1-A was five cents higher than the prices you had named under the corresponding items of the first bid. How do you explain that?

25263

A. As I just testified in connection with these two exhibits, 871 and 872, our first proposal is prices under item 1 for 96,000 barrels, 2.0126 per barrel, and under item 1-A for 4,000 barrels in paper, 1.7626 per barrel; and, as I also testified, we had attached a rider to this bid telling the Government that the laboratory would be built at their expense; and, as I just testified in connection with Exhibit 872, the additional figure was shown under item 1-A, which amounts to 2.0626—that is, under item 1. Under item 1-A for 4,000 barrels in paper, 1.8126 which shows an additional cost of 5 cents per barrel, which we estimated to be the cost of building the laboratory that they had requested in their proposal.

Q. And that is the manner in which you arrived at the five cents additional?

A. Absolutely.

Q. And that bid is your final bid which included that additional five cents?

A. Yes, sir.

Q. Mr. Postelle, did you have any communication with any of your competitors with respect to that or with respect to the submission of your bid in any way before you submitted it?

A. Absolutely no communication whatsoever.

25264 The witness identified Resp. Ex. 873 as Alpha's office copy of its letter of June 19th to the District Engineer at Memphis, which accompanied its bid, in which it advised the Government that its bid provided for the construction of a laboratory. Alpha called their attention to the fact that it had a very competent and up to date laboratory, fully equipped to meet any requirements that might be needed in the way of testing cement, which Alpha would be very glad to turn over to them without any cost whatsoever.

(RESP. EX. 873 was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Postelle, I wish to call your attention to 25265 Commission's Exhibit 780, it being an abstract of the bids received by the War Department at Memphis on February 4, 1931. Did your company bid on that letting?

A. We did.

The witness identified Resp. Ex. 874 as the Birmingham office work sheet made up under his instructions and with his help in connection with the prices that it would use to bid on this proposal. This work sheet was used in the computation of the bid which the Birmingham office submitted on that letting.

25267 (RESP. EX. 874 was offered and received in evidence.)

The witness identified Resp. Ex. 875 as a 25268 telegram prepared under Alpha's direction at the Birmingham office and sent to the District Engineer at Memphis in connection with this bid, and calling the District Engineer's attention to a change in Alpha's price, and asking the District Engineer to change the proposal.

Q. What is the number of that exhibit, please?
A. Exhibit No. 875.
Q. What was your final price, then, f.o.b. at Phoenixville?
25269 A. As I testified previously in connection with our Birmingham office worksheet, Exhibit No. 874, the price that we decided to bid for Hickman, Ky., which we established by taking the Boyles base of 2.01 per barrel, the Boyles' land grant rate of .45828, which would make a cost to the Government of 2.46828. From that we deducted the land-grant rate from our mill at Phoenixville of .54568, leaving a figure that I testified that would be our bid of 1.9226. And, incidentally, I would like to say that in connection with making up this bid and taking into consideration previous proposals from the U. S. Engineer's Office on this Mississippi River, and from Memphis, we found that they had been using the Cairo, Hickman, and Memphis figure, and we took the highest land-grant rate from our mill to Phoenixville of .54568 rather than using the two lower land-grant rates, which would apply from our mill to Cairo or Memphis, giving the Government the benefit of the very lowest possible price that they could obtain from Phoenixville, using land-grant rates, because we did not know where the cement would finally go, and the Respondents' Exhibit 875 shows that we had a deduction in our price of 5—

Trial Examiner Norwood: Now, don't tell what that shows; it has not been received yet, has it?

Mr. Leisure: Oh, yes.

25270 Trial Examiner Norwood: Go ahead; complete your answer.

A. (Resumed) The telegram, Respondents' Exhibit 875, which I just testified in regard to, told the District Engineer that we had made a reduction in our price of 5 cents.

Mr. Wooden: Is that in evidence?

Mr. Leisure: (Addressing Reporter) Was that received in evidence?

The Reporter: No, merely marked for identification.

(RESP. EX. 875 was offered and received in evidence.)

By Mr. Leisure:

Q. Now, Mr. Postelle, you have told us that your original price was 1.92260, and you say that you

found that you had an additional price to add of
25271 5 cents—I mean, you reduced it by 5 cents,—is that correct?

If it is not correct, will you please explain it?

A. Just as I testified, or was trying to complete my answer, the work sheet showed that our price was 1.9226. We advised—

Q. "60," wasn't it—excuse me.

Trial Examiner Norwood: Let him tell us.

A. 1.9226, and, as shown in Respondents' Exhibit 875, we informed the Government that we had a reduction in our price of 5 cents, and asked them to correct our bid, which shows in the Government exhibit that they did, and our bid was 1.8726.

Q. And as to arriving at any of this figuring that you have been telling us about, in arriving at that price
25272 which you say appears on the tabulation, did you have any communication with any of your competitors with respect to it in any way?

A. Absolutely not.

Q. Mr. Postelle, Exhibit 187-A to L is a Commission's exhibit having to do with bids by the War Department at Vicksburg, Miss., on November 9, 1932. Did your company bid on that letting?

A. We did.

25273 The witness identified Resp. Ex. 876 as purporting to be a letter to J. G. Bragg written by him. It was directly in connection with this letting of November 9 at Vicksburg, and in reference to Government [Com.?] Ex. 187. The witness identified Resp. Ex. 877 A to C as the Birmingham office work sheet in connection with this particular bid which witness made up regarding the recommendations that Alpha would make as to its proposal in connection with this letting of November 9.

(RESP. EXS. 876, 877-A, 877-B, and 877-C were
25274 offered and received in evidence.)

By Mr. Leisure:

Q. Did you use the memorandum, Exhibit 877-A, B, and C in any way in writing the letter, Respondents' Exhibit 876? To save time, was that the basis of your letter in any way?

A. Well, I will have to read the letter. This is my computation here and I would like to read that letter.

Q. All right. Won't you just glance over it without

reading it and tell me whether it is? I mean, can you refresh your recollection now, Mr. Postelle, from the document without reading it? Tell us whether or not you used the memorandum in making up your letter in any way?

25275 A. Why, the letter Respondents' Exhibit No. 876, which I wrote to Mr. J. G. Bragg, is directly taken from the work sheet or computation which we referred to as 877-A, B, and C.

Q. Can you identify Respondents' Exhibit 878, for identification, Mr. Postelle? I show you Respondents' Exhibit 877-A, B, and C, and 876, which are part of the same transaction.

A. Respondents' Exhibit No. 878 is further material or work sheets done in our Birmingham office which we made up in connection with this bid, making further computations in addition to those computations shown on 877-A, B, and C.

Q. But in the last one, Mr. Postelle, the mill price apparently is different from that as stated in your three-page memorandum. Can you explain that?

Mr. Porter: You mean the mill base, don't you, Mr. Leisure? The mill base?

25276 Mr. Leisure: Yes.

A. In Exhibit 877-A, B, and C, which are the figures that I made up, I took the Greenville delivered price, which was based on the figure that we were using from Marquette, and from that deducted the actual fractions, or all of the decimals, .722, from that, which would make a price of 1.648, and from that—or, rather, change that word—rather, added to that the land-grant rate which we computed from Marquette of .6517, which would make a price at Greenville, or a cost to the Government on land-grant rate of 2.2997.

If we took this figure which I have shown in this work sheet and deducted from that the Phoenixville land-grant rate, which we figured at .50616, it would give us a price at our mill of 1.79354.

I also further went on and pointed out that if we took a base figure at Marquette, or the mill base, whichever you want to call it, of 1.65, plus the land grant of .6517, it would give a price at Greenville of 2.3017, taking our land grant of .50616 from that would give us a price to bid of 1.79554, rather than the 1.79354.

This additional computation also shown on—

25277 A. (Continuing) —878, shows that we made up a figure using the base bid of Marquette of 1.65, adding to that the land grant of .6517, and deducting from that the Phoenixville land grant, and giving us a price to bid of $1.79554.

(RESP. EX. 878 was offered and received in evidence.)

25278 The witness identified Resp. Ex. 879 as a letter prepared under his direction in the Birmingham office. Following Alpha's usual procedure of getting information with regard to land grant rates, it asked its salesmen on November 2nd to go to Vicksburg and obtain the land grant rates, which they had on hand, and which they expected to use on their November 9th bid, in view of the fact that there had been some change in the freight rates due to an emergency job. They were obtained from the United States Engineer's Office at Vicksburg in connection with this proposed bid of November 9th, [Com.?] Ex. 187 A. The witness identified Resp. Ex. 880 as a reply from Alpha's salesman, Mr. McRoberts, to this communication which Alpha had just sent to Mr. McRoberts, telling it that Mr. McRoberts had made this call on the United States Engineer's Office, and advising it that there was no change in the land grant rates.

25279 (RESP. EXS. 879 and 880 were offered and received in evidence.)

The witness identified Resp. Ex. 881 A to F as the Birmingham office copy of Alpha's October 29 proposal to be opened on November 9, made up in accordance with work sheet referred to, and making a price of 1.79554, "and under item 1 A on the alternate bid". That is Al-

25280 pha's bid. The pencil memorandum on the front page is signed by Mr. Bethune, okeying the correctness of the bid. Mr. Bethune is traffic manager in the Birminfham office and is also without title one of witness' assistants. Mr. Roberts is Alpha's salesman in Monroe, Louisiana.

(RESP. EX. 881-A to 881-F was offered and received in evidence.)

By Mr. Leisure:

Q. Now, in order to save time, Mr. Postelle, will you look at Respondents' Exhibit 836 and tell us whether or not you arrived at your price from your commercial

25281 price as you previously testified with respect to other bids?

A. Yes.

Q. Mr. Postelle, did you have any communication with your competitors in any way with respect to the submission of this bid?

Mr. Wooden: Oh—

Trial Examiner Norwood: He has stipulated that this witness would testify to that.

25282 By Mr. Leisure:

Q. Mr. Postelle, I desire to call your attention to another Commission's exhibit bearing the number of 791. It is an abstract of bid received by the United States Engineer's Office in Arkansas opposite Memphis, Tenn., on November 14, 1933.

Q. Did your company bid on the letting, Mr. Postelle?

A. We did not.

25286 By Mr. Wooden:

I said I was willing to agree that it would never be contended that in this particular letting the Alpha Company refrained from bidding as the result of any collusion.

25291 By Mr. Leisure:

Q. Mr. Postelle, I call your attention to Commission's Exhibit 792-A and B, which is an abstract of the bids received by the War Department at Vicksburg, Miss., on April 3, 1934.

Did your company bid on that letting?

A. We did.

25292 The witness identified Resp. Ex. 886 as a letter from the Birmingham office prepared under his direction to Easton, Pa., in connection with this proposal to be opened on April 3, 1934, Government's Exhibit 792 A and B; Resp. Ex. 887 as a worksheet made up in the Birmingham office giving the land-grant rates and Alpha's recommendations as to the bid.

Mr. Leisure: I offer them in evidence (handing to Mr. Wooden Respondents' Exhibits, for identification, 886 and 887).

Mr. Wooden: Your Honor, an objection is made to these two offers as being unduly cumulative, and I offer to stipulate that work sheets and records showing the mathematical records of calculating these bid prices existed in every case that is in the record, and that the calculations similar to these calculations that have been offered and received

in evidence here can be produced for all other cases
25293 where the Alpha Company has participated in these bids.

Mr. Leisure: Of course, the calculations, that is merely one of the steps, Your Honor, in arriving at these. The explanation of the witness on the stand as to how they made them, and what they did in connection therewith, is the thing that gives flesh and bone to the action.

Trial Examiner Norwood: Well, how is the method any different in the case of this bid,—any different from the other bids?

Mr. Leisure: It is the same in this respect, that in this case, and in all other cases, they did not enter into any collusion with their competitors.

Trial Examiner Norwood: Yes.

Mr. Leisure: In that respect they are the same; but in the respect of how they arrived at their figures, they are all totally different.

Mr. Wooden: Of course, the figures and the methods—

Trial Examiner Norwood: The figures happen to be different, but is there any difference in the method?

Mr. Leisure: I said as to how they arrive at their figures, I did not say the figures were different. I said as to how they arrived at them, the methods they used.

Trial Examiner Norwood: Haven't you put in
25294 sufficient there to illustrate this method which the Commission's Counsel said they would agree was employed in each and every instance?

Mr. Leisure: I do not know how to generalize in that way on this kind of proffer, Your Honor.

Here are certain bids that the Commission has offered in evidence, and the approach to the problem in each instance is totally different. They arrived at the figure sometimes in one way, because of certain circumstances, and in the case that we had just before luncheon they did not even bid at all because they thought the competition was too great.

Trial Examiner Norwood: Yes.

Mr. Leisure: So that I know of no way of generalizing in the way that Mr. Wooden suggests it, unless he wants to stipulate to the fact. If he wants to stipulate to the ultimate fact which we are trying to prove on this, then we can get together.

Trial Examiner Norwood: What is the ultimate fact?

Mr. Leisure: The ultimate fact that there was no collusion in submitting these bids with any Respondent.

Trial Examiner Norwood: That would not be the evidentiary fact here which you propose to establish.

Mr. Leisure: We do propose to establish it.

Trial Examiner Norwood: And that is that they
25295 did arrive at the price in this way.

Mr. Porter: Your Honor, it seems to me—

Trial Examiner Norwood: You can't hope to do more than that in this line of testimony.

Mr. Porter: It seems to me, Your Honor, that here is a situation: The Government was permitted over a period of two years to put in hundreds of bids. There was nothing new; after they put in two or three bids they had shown the method, but the Government put in hundreds of these things. Now, they object to our meeting the evidence on the particular bids that they put in. There are only two alternatives. The Government can strike out any number of bids that they want to. We won't raise any objection to it, and we will offer no evidence on bids they strike out. But as long as the bids that the Government has put in remain in evidence, we must be permitted to explain what we did in connection with those particular bids.

Now, I will agree with you that there was no justification for the Government putting in all of those bids, but having put them in and been permitted to put them in frequently over our objection, then we must be permitted to answer the testimony that the Government has put in.

Trial Examiner Norwood: There is a single explanation of the whole thing, and you put in sufficient evidence
25296 to illustrate the method which constitutes that explanation. Why repeat on this and give numerous and cumulative instances of the application of that method?

Mr. Porter: My understanding—

Trial Examiner Norwood: Wait a minute.

Mr. Porter: Excuse me.

Trial Examiner Norwood: When the Commission's Counsel agrees as they—

Mr. Leisure: He hasn't really agreed to anything.

Trial Examiner Norwood: —that in each and every case you did employ that method.

Mr. Leisure: What method?

Mr. Porter: Why should the Commission be permitted to put in two or three or four hundred bids to prove any-

thing? If they put in two or three or four, they prove the method.

Trial Examiner Norwood: Now, if you want to meet that any say that you did put in some, and you didn't put in others, you can meet each and every one of them, but I think I have been very clear on this thing.

Mr. Porter: I think—

Trial Examiner Norwood: You have got one explanation that you say applies to all, and that is a method.

Mr. Werle: That is not so.

Trial Examiner Norwood: That has been demon-
25297 strated to us.

Mr. Porter: That isn't what we have said. That is what Mr. Wooden has said, and you are taking what he says, not what we say.

Mr. Wooden: You haven't said anything but generalities on it.

Trial Examiner Norwood: I have listened to what all of you have said about it.

Mr. Porter: But we say in our evidence as to each of these bids they differ in many respects from each other. We are showing how our procedure has varied, and we are entitled to show that.

Trial Examiner Norwood: Do you claim that there is a different procedure in regard to each one of these bids here about which you have put in testimony?

Mr. Porter: I don't say each, but I say over the range, there is a material difference.

Trial Examiner Norwood: You claim that this bid here was arrived at by a different method from the preceding one?

Mr. Porter: This particular one, yes. This happened to be a Code bid, and we filed a price under the Code.

Trial Examiner Norwood. Well, put it in.

Go ahead.

25298 Mr. Wooden: The Code bids were not different.

Trial Examiner Norwood: But we are going to reach the end of this very soon.

Mr. Leisure: These have not been received yet, 886 and 887.

Trial Examiner Norwood: Received as marked.

(RESP. EXS. 886 and 887 were offered and received in evidence.)

The witness identified Resp. Ex. 888 A to E as a copy of

the Birmingham office bid in connection with Government's Ex. 792 A from Monroe, La. of April 3, pre-
25299 pared under his instructions and signed by him.

Examination on Voir Dire by Mr. Wooden:

25300 He could not say whether the correction in ink on Resp. Ex. 888-A was made by him or pursuant to Mr. Shaw. They worked those things out together, and witness knows that a great many times he printed it in that form. The corrected ink figures were the ones that were actually submitted in the original bid.

(RESP. EX. 888-A to 888-E was offered and received in evidence.)

The witness identified Resp. Ex. 889 as a letter
25301 addressed to him from Easton, returning Birmingham's proposal as it had submitted it; Resp. Ex. 890 as a copy of Mr. Coogan's letter to the Code Authority, filing the prices that Alpha had given in its proposal; Resp. Ex. 891 as a letter from the Birmingham office to Mr. Coogan with further reference to this bid; Resp. Ex. 892 as a work sheet made up in his office and under his supervision giving information as to the changes suggested in the previous letter. The pencil notation at the bottom of the page of Resp. Ex. 889 is a memorandum of the computations giving the total amount in dollars and cents of the price submitted to the Code Authority times the amount shown in the proposal of 4,000 barrels. It is also the same multiplication on the commercial price times 4,000 barrels.

Q. Now, Mr. Wooden asked you about a correction on the face of the bid. I think you told him that the bid was submitted as corrected.

25302 A. Yes, sir.

Q. Have the exhibits which you have just identified anything to do with that bid,—and, if so, what?

A. In our proposal which is marked "Respondents' Exhibit No. 888-A," we have originally submitted a figure of 1.89468 per barrel, which is the same figure made from our original computation in our Birmingham office in which we had asked Easton—or, rather, asked Mr. Coogan, our superior—to file with the Code Authority.

Respondents' Exhibit 891 is a letter to Mr. Coogan advising him of a change in the land-grant rate which we had just obtained from the Southern Railroad, making the

a change in the freight rate from Phoenixville to Monroe, La., from .45278 to a reduction of .44384.

We also pointed out that we were meeting the competition of $1.90 per barrel f.o.b. Boyles, Ala., on their land-grant of .43358. This was brought out in Respondents' Exhibit No. 892 from the work sheet that we made up after we got the change in the freight rate from the Southern Railroad, and we asked Mr. Coogan to—or, rather, we told Mr. Coogan in our letter of March 29th, and referred to his telephone conversation, that we would quote this new price, and the change was therefore made in the bid.

Mr. Leisure: I offer Respondents' Exhibits 889 to 892, inclusive, in evidence (handing documents to Mr. Wooden).

25303

Trial Examiner Norwood: Now, what is there about the method that these illustrate that is different from the method—

Mr. Leisure: This is not a new one.

Trial Examiner Norwood: What is different from the method heretofore employed?

Mr. Leisure: This is not a new one, Judge. This is the same one Mr. Porter was talking about a moment ago. We have not finished with that yet. You told us to go ahead and put this one in.

Trial Examiner Norwood: Yes.

Mr. Leisure: We are doing that. We have not finished with that other yet.

Trial Examiner Norwood: I see.

Mr. Wooden: Your Honor, if these papers are offered to show the departure from the practice prescribed under the Code, or to show a different practice used by the Alpha Company from that used by its competitors, I have no objection. If they are offered to show conformance to the practice prescribed under the Code, or to show similarity with the action and methods employed by competitors, then I object as being unduly cumulative.

25304 By Mr. Leisure:

Q. Will you look now at Respondents' Exhibit 890 and tell the Examiner whether or not that came to your attention at the Birmingham office?

25305 A. It most assuredly did as all correspondence of this nature did come to my attention, particularly mailed by Mr. Coogan. On no occasion did mail from Mr. Coogan go to anyone else but me.

Trial Examiner Norwood: Do you recall that in connection with this bidding here?

The Witness: Yes, sir.

Trial Examiner Norwood: And you received it and you used it?

The Witness: Yes, sir.

25308 Mr. Wooden: I was just about to say, I make no point of a technical objection about that particular paper. My objection goes deeper than that. It is just as I said before, if they offer this to show any departure from the Code or from the practice of competitors, I have

25309 no objection. If it simply shows conformance to the Code and conformance with the practice of competitors, then it is unduly cumulative.

Trial Examiner Norwood: Well, I agree with the Counsel on the principle provided that the testimony goes no further than he claims, but in any view of the case Respondents should be permitted to demonstrate, to show, and to illustrate their method that they employ, and to give a sufficient number of instances to illustrate it even if it does prove the Government's case, or to emphasize some differences therefrom which they can argue to different conclusions.

(RESP. EXS. 889, 890, 891 and 892 were offered

25310 and received in evidence.)

By Mr. Leisure:

Q. Mr. Postelle, do you know of your own knowledge whether or not subsequent to this time you made any new filing with the Code of this revised bid?

A. I am sure that we did, but I can't find any record of it.

Q. To save time, will you just look at Respondents' Exhibit 859 and tell us whether you arrived at your price of $2.53 in this instance in the same manner that you have already described in several preceding bids?

A. We did.

Q. What is the card?

A. Exhibit 859 is our continuous record of prices quoted at Monroe, La., from May 1, 1928, to April 14, 1939.

Q. Again, Mr. Postelle, did you have any communication of any kind with competitors as to what you would or would not bid with respect to this letting?

A. We did not.

Q. I would like to call your attention now to another Commission's exhibit, Mr. Postelle, which is listed as Commission's Exhibit 156, and I will take up at the same time another Commission's exhibit, 157.

Did your company submit any bid on the letting as shown by those Commission's exhibits?

A. We did.

25311 The witness identified Resp. Ex. 893 as a letter from the Birmingham office submitted under his direction to the United States Engineer's Office, attaching Alpha's bid in connection with the proposal of October 1, 1937. The longhand writing is that of Mr. Bethune, giving his okay that he has checked the bid. The witness identified Resp. Ex. 894 as Alpha's bid in connection with this proposal giving destination costs and f.o.b. destination commercial price.

Mr. Leisure: I offer them in evidence.

25312 Mr. Wooden: I take it this applies to some Commission exhibit already in evidence. Did you give that number?

Mr. Leisure: Yes, two exhibits in number.

Mr. Wooden: I see.

The Witness: Commission's Exhibits—looks like 157 and—

Mr. Porter: 156.

The Witness: —156.

25315 Mr. Leisure: Now, in each one of these there is no such thing as a method, because every bid stands or falls on its own bottom. Every one of them was taken up, as was explained by Mr. Coogan, and the matter was discussed, and they figured on whether or not they could afford to bid on it, and what the competition is.

Now, these exhibits do prove that we acted independently, and that we arrived at these conclusions without any collusion with anyone else.

Trial Examiner Norwood: Hasn't every one of these instances that you have shown here demonstrated the fact that the price was figured out from some basing point?

Mr. Leisure: Well, I would have to ask the witness that, but, granting that that were true, that is only a very small part of this whole picture,—that is only one element.

Trial Examiner Norwood: That basing point is the issue here. It is not what you did after you got the basing point; and just what figures you made on the paper to arrive at

some price here, but how you got this common factor, and what is the effect of using this common factor. If that is different then why do we waste all this time on something that is merely incidental?

Mr. Leisure: It seems to me—

Trial Examiner Norwood: What figures he made
25316 on these papers here, after arriving at the base price, and what base price to use, and what freight to add, is merely incidental.

Now, we are wasting our time showing that, I think.

Mr. Leisure: Well—

Trial Examiner Norwood: Now, if there is something else about these instances that you want to bring out, tell us what it is and we can decide whether it is worth the time to take it in.

25326 (RESP. EXS. 893, 894-A to 894-E were offered and received in evidence.)

25327 The witness identified Resp. Exs. 895 and 896 as Alpha's regular Birmingham office land-grant and destination cost cards used in connection with Government bids. The witness is referring to the letting which he has in his hands and to which he has already referred. Resp. Ex. 895, the one for Greenville, Miss., was prepared especially in connection with this Government exhibit referred to of October 1, 1937, and was prepared on that date.

Q. Were they something new, Mr. Postelle, or had you prepared cards such as this before, or was it your practice to prepare cards such as this for Government lettings?

25328 A. Do you want me to tell you just when we put in the system or do you want—

Q. Well, in your own words. I don't want to suggest anything to you. I want you to tell me whether or not you used these cards regularly or whether it was just a special occasion.

A. This is the identical card which we used on all Government bids at the present time, and have used since, I think, after the dropping of the Code.

Q. You say "have used." Just tell us without reading the card how they are made up, just what they are.

A. When we get a proposal from the United States Government at the present time, if we haven't got a similar card to this in our file which shows the correct land-grant rates, which we have obtained from the sources that are

shown on the card, we immediately obtain land-grant rates and make up this card in connection with that and future bids.

Q. Now, on one of those cards, Exhibit 895, there is the language "Quoted By," and then there are the letters "IC." And then on 896 there is "Quoted By" and other letters there. Can you explain those?

A. Yes, sir.

On Respondents' Exhibit 895, it shows that all of the land-grant rates which we have outlined on the card were quoted by the Illinois Central Railroad. The Respondents' Exhibit No. 896 shows that the land-grant
25329 rates were quoted by the Central and Georgia Railroad, and in connection with the bid of a previous letting.

Q. Mr. Postelle, on the bottom of 896 there is a pencil memorandum. What is it?

A. On the Respondents' Exhibit No. 896—shall I tell exactly what it is? I mean—

Q. What is it?

A. It is a memorandum written by Mr. Bethune which was information that he had obtained from our salesman, Mr. McLain, who attended the letting, and who gave us information that our competition at Fort Oglethorpe, Ga., in connection with the letter of February 11th—

Mr. Werle: What year?

The Witness: 1937.

A. (Continuing) —had made competition, which we informed Mr. Coogan about, and he asked us to meet it on future bids.

Q. What was the nature of that competition, if you know?

25330 A. Why, the memorandum shown on there, I remember that very distinctly, Mr. McLain attended the letting, as our salesmen attend all of these lettings wherever they possibly can, and taking down his abstract of the bids he found that the Signal Mountain Company had dropped all fractions past the second decimal.

I do not remember that particular figure without referring to the card, but as the card will show, it is our proposal, could not meet the competition, that they were lower than we were.

We had been carrying our computations on the land

grants from the railroads out to the fifth decimal, and the Signal Mountain Company had quoted dropping all these decimals regardless of the fact that some of the decimals even were higher than a half cent.

By Mr. Leisure:

Q. As I understood you, you actually used this computation?

A. The computation shown on our cards at Fort Oglethorpe, at the date shown, was our bid, the computation that we used.

25331 (RESP. EXS. 895 and 896 were offered and received in evidence.)

By Mr. Leisure:

Q. You have told us in a general way what you
25332 did with respect to land-grant rates and how you kept these cards.

Addressing your attention to this particular letting, Mr. Postelle, after you had obtained the land-grant rates for the various cement mills with respect to this letting, what did you do?

A. Now you are referring to the letting that is in evidence or are you referring to—

Q. No, I am referring to Commission's Exhibit 156 and Exhibit 157 (showing to witness).

A. After obtaining the land-grant rates in connection with the proposal received from the Government, Commission's Exhibit 156 and 157, of October 1, 1937, we obtained the land-grant rates from seven competitive sources; from the Illinois Central Railroad we determined that the lowest land-grant rate applicable on this particular destination would be from Boyles, Ala. We took the base price which we were using at that shipping point, at that time, which at that time was $1.70, and made up our bid of $2.10559, and in view of the competition which we testified on, Exhibit 896, which we had found on previous lettings, we dropped the decimal beyond the second decimal, and put in our bid on the basis of 2.10.

We also show on this card, Respondents' Exhibit 895, the commercial price which we quoted on that particular letting, which is 2.33 per barrel in bulk at Greenville, Miss.

Q. Now, I notice, Mr. Postelle, on this card,
25333 Respondents' Exhibit 895, that in converting this land-grant rate per hundredweight from Boyles to

the land-grant rate per barrel, you multiplied by 376 instead of 380, in converting hundredweights into barrels.

Have you any explanation for that?

A. Yes, sir. The Exhibit 895—and may I have the proposal?

(Counsel hands document to witness.)

A. This Exhibit 895, and Respondents' Exhibit 894-A, show that the proposal from the District Engineer at Vicksburg is asking for quotations on 22,500 barrels of cement in bulk, or, in other words, without the bag, and the weight on a standard A. S. T. M. specification barrel of cement in bulk was 376 pounds. We therefore determined our rate to quote on this, on that basis, rather than 380 pounds.

Q. Now, you say as to this that you dropped the fractions. Was there, to your knowledge, any Government lettings prior to this where you made a bid which included the fractions, where your competitors dropped the fractions?

A. Yes, I just testified to the letting of February 11, 1937, at Fort Oglethorpe, Ga., where our bid to the Government in connection with that particular letting was 2.23892, and we found that the Signal Mountain Company dropped the decimals "892," and asking for authority from Mr. Coogan as to how to handle this competition, he told us to meet it on future bids of this kind.

25334 Q. Well, now, you say as to that, what has been your practice since February, 1937,—have you consistently followed the practice of dropping the fractions beyond cents, or have you kept them?

A. We have dropped the fractions—we have dropped the decimals or fractions beyond cents, full cents.

Trial Examiner Norwood: You have dropped the third decimal, that is?

The Witness: Anything beyond the third decimal.

Trial Examiner Norwood: Well, do you take it up if it is a half or more?

The Witness: Well—

Trial Examiner Norwood: Increase the second one by one, if it is a half or more?

The Witness: Drop the full, all the decimals.

By Mr. Leisure:

Q. Now, again, Mr. Postelle, to save time, will you look at Respondents' Exhibit 836 and tell us whether or

not you arrived at your destination price in the same manner as you have heretofore testified with respect to other bids?

A. We did.

25335 Q. Now, again, with respect to not only this letting, the final amount, but as to that question of dropping the fractions that you have told us about, did you have any communication with any of your competitors in any way with respect to that?

A. Absolutely not.

Q. I call your attention to another Commission's exhibit, Mr. Postelle, bearing the number of 180, which appears to be an abstract of bids received by the U. S. Engineers' Office at Vicksburg, Miss., on August 30, 1937. Did your company bid on this letting as represented by Commission's Exhibit 180 (handing to witness)?

A. We did submit a bid on this letting.

The witness identified Resp. Ex. 897 as Alpha's regular Birmingham destination cost card showing land-
25336 grant rates and a computation of the bid in connection with the letting of August 30, 1937. It was used in connection with the preparation of his bid on this letting.

(RESP. EX. 897 was offered and received in evidence.)

By Mr. Leisure:

Q. I notice on this card, Respondents' Exhibit 897 under "Quoted By" certain abbreviations. Will you explain what that column is?

A. Do you want me to show the destination point of the abbrevation, or just read the abbreviation?

Q. Well, I want you to tell me what it is, what the abbreviation is, and why it is there.

A. Well, the abbreviation "L. & N." was the Louisville & Nashville Railroad, showing that we obtained
25337 the rate from Boyles, Ala., from that road.

The abbreviation "SOU" shows that we obtained the rate from the Southern Railroad, land-grant rate, shown on this card from Leeds, Ala.

And the abbreviation "IC" shows that we obtained the land-grant rate from North Birmingham, Ala., from the Illinois Central Railroad.

Q. Now, again, without going into it at all in detail, will you just look at Respondents' Exhibit 859, and tell us

whether or not you arrived at your destination price in the same manner as you heretofore testified with respect to other bids?

A. We did.

Q. Mr. Postelle, calling your attention to Commission's Exhibit 1084-A and B, which is an abstract of bids received by the Department of Agriculture on October 30, 1936, at Spartanburg, S. C. (indicating).

Did your company bid on the letting represented by this Commission's exhibit?

A. Yes, we did submit a bid.

25338 The witness identified Resp. Ex. 898-A to E as a copy of Alpha's Birmingham office bid made to the Department of Agriculture on October 16, 1936, and attached to it under Resp. Ex. 898-E is Alpha's Birmingham office letter known as form letter No. 2 which it attaches to all Government destination cost bids.

25338 (RESP. EX. 898-A to 898-E, inclusive, was offered and received in evidence.)

25339 By Mr. Leisure:

Q. Mr. Postelle, what are Exhibits 899, 900, and 901?

A. Well, when you say "What are the exhibits?" Mr. Leisure—

Q. I just want you to identify them so that I can offer them in evidence.

Trial Examiner Norwood: What are they?

A. Respondents' Exhibit 899 is our regular Birmingham destination cost card for Liberty, S. C., and Exhibit No. 900 is our regular Birmingham office destination card used for Anderson, S. C., and 901 is the same card for Abbeville, S. C., used in connection with the bid of October 31, 1936.

Q. You say "used in connection with the bid." Does that apply merely to the last card, or does that apply to all three cards?

A. All three of these cards were used in connection with bids because the proposal called for shipments of certain amounts to these three different destinations.

25340 By Mr. Leisure:

Q. When were these cards made up, Mr. Postelle?

Trial Examiner Norwood: Have your offered those?

Mr. Leisure: No. I was just going to ask him when they were made up.

A. The cards show that they were made up on October 30th.

Trial Examiner Norwood: When do you say they were made up?

The Witness: I say they were made up then. I was just looking at it to see—I mean, the abstract. Those three cards were made up on October 30, 1936, in connection with that bid.

(RESP. EXS. 899, 900 and 901 were offered and received in evidence.)

By Mr. Leisure:

25341 Q. In the righthand column of these cards there is a heading "Quoted By." Will you explain what that means?

A. On the card for Anderson, S. C., where it says "Quoted By," there are the initials "CR" which stand for commercial rate, as there was no land-grant rate from Charleston, S. C., which was the base that we used for Anderson, and the initials "SOU" shows the land-grant rate which we obtained from the Southern Railroad for Boyles, Ala., and which is shown on the card. And on the card for Liberty, S. C., the "SOU" means Southern Railroad, and shows that the quotation for the land-grant rate used in this bid was obtained from the Southern from Boyles, Ala. And the other card for Abbeville, S. C., Exhibit No. 901, is written "Southern," which is the Southern Railroad, and shows that we obtained the land-grant rates applying from Boyles, Ala.

Q. I notice on Respondents' Exhibit 901, Mr. Postelle, there are six decimals in the third column from the right, and then the last one is stricken out. How do you account for that?

A. On Respondents' Exhibit 901, which shows
25342 the land-grant rate as quoted by the Southern Railroad for Boyles, Ala., of .524742, the sixth decimal was stricken out because for a long time—I don't know how many years—we had only been using in our computations five decimal points. As a matter of fact, I found in my own personal observation of previous years that the Government Engineer's Office, and other Government offices, would not carry the computations further than five

decimals, and I am of the opinion tha the first time that it is started of five decimals was the United States Engineers in the construction of the Wilson Dam, quite a long number of years back.

The witness identified Resp. Ex. 902 as Alpha's regular commercial price card for Abbeville, S. C., showing the prices used by Alpha in making quotations on that point from May 1, 1928 to January 26, 1939; Resp. Ex. 903 as Alpha's regular commercial price card used at Anderson, S. C., from May 1, 1928 to January 26, 1939; Resp. Ex. 905 as Alpha's regular commercial price card for Liberty, S. C., from May 1, 1928 to January 26, 1939; Resp.
25343 Ex. 904 as a continuation of Alpha's price record for Anderson, S. C.; Resp. Ex. 906 as a continuation of the price record of Liberty, S. C.; Resp. Ex. 907 as a continuation of Alpha's commercial price record for Abbeville, S. C., from Resp. Ex. 902. Those cards were used in absolutely the same manner in connection with this bid as they were used in preceding bids, both as to the price shown on the destination cost card and for the commercial price which was taken from Alpha's regular commercial price cards.

Examination on Voir Dire by Mr. Wooden.

The figures in the right hand column on Resp.
25344 Ex. 902, starting at the top, which is "NB" shows the price on May 1, 1928 at Abbeville, was used as a base at North Birmingham. That was continued until November 25, 1929. In the next column, "L" is for Leeds; in the next two columns, the "CH" is for Charleston; the next column is Birmingham. That is on February 12, 1931; the next "MI" is for Mitchell; the next "CL" is for Clinchfield; the next "MA" is for Marquette; the next is for Clinchfield, that is shown as 718; the next is "I" for Ironton; the next three for Leeds; the next is for Clinchfield; and the final, on the other side of the card,
25345 on Resp. Ex. 907, is for Birmingham. The next is "S" for Speed.

25347 (RESP. EXS. 902, 903, 904, 905, 906, and 907 were offered and received in evidence.)

25348 Brooklyn, N. Y.,
October 20, 1939.

25349 CHARLES P. POSTELLE thereupon resumed the stand and testified further as follows:

Direct Examination (Continued).

25350 The Witness: Respondents' Exhibit 858 and Respondents' Exhibit 856, in connection with the Monroe bid, Government's Exhibit No. 773.

25351 We used the Boyles' rate, which will show on our commercial price card as a base figure that we took at that time of 2.10, and the land-grant rate of .43244, and it is a very simple computation to show how we arrived at our price of 2.0824, which is shown on our Exhibit 856-A, or, in other words, these exhibits will show that we were using that base and arriving at that figure used the land-grant rate of .44004, which is taken from the process of deduction.

In other words, as I pointed out, when I first started out, that was made up identically on the same basis as all of those Government lettings, where we took our commercial price card and our record of the lowest bidding figure that we could use and obtained these land-grant rates from the previous letting and made our computation accordingly.

25352 By Mr. Leisure:

Q. Mr. Postelle, I hold in my hand a Commission's Exhibit No. 1094, which is an abstract of a bid for the Department of Agriculture, and it is dated November 4, 193 . The year is left out. I suppose it is 1936. Do you know whether that is so or not?

A. Yes, we bid on that.

Q. Did your company bid on that letting?

A. Yes, sir.

25353 Q. What was the date of the invitation on that letting, if you know, Mr. Postelle?

A. The date of the invitation was October 20th for letting on November 4, 1936.

Q. And the date of the bid was what, if you know?

A. The date of our bid would be in accordance with the date that it was received—November—the proposal was, November 4, 1936, and it is dated under October 31, 1936, the day it was submitted.

Q. The proposal was submitted on what day?

A. The proposal was dated October 31, 1936.

The witness identified Resp. Ex. 908-A to E as a Birmingham office copy of Alpha's bid dated October 31, 1936, prepared under his direction and help in connection with the proposal for the U. S. Department of Agriculture on November 4, 1936.

Q. Now, without any prolonged testimony or any explanations of any kind, can you tell me in one word
25354 or in a simple answer whether or not you determined your prices under items 1, 2, 3, 4, and 5 in the manner that you have already described as to commercial prices?

A. Absolutely.

(RESP. EX. 908-A to 908-E inclusive was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Postelle, I notice on this bid that you made a change here in paragraph 1 of the conditions and
25355 provided for the deletion of paragraph 5.

First, let me ask you, in doing that, did you do it as a result of having any contact with your competitors as to that in any way?

A. We certainly did not.

Q. Do you know whether or not, Mr. Postelle, the document I hold in my hand, Respondents' Exhibit 909, for identification is the document referred to in the bid?

A. Yes, this is the copy of our Birmingham office form letter which we made up in connection with bids where we used this form of bidding.

25356 (RESP. EX. 909 was offered and received in evidence.)

The witness identified Resp. Exs. 910 to 914 as identical Birmingham office destination cost cards made up by Alpha and used in connection with this bid to be opened on
25357 November 4 at Spartanburg, S. C.; Resp. Ex. 910 as Alpha's destination cost card for Switzer, S. C., giving the destination cost which it used, how it is made, and also shows the commercial price used in the bid taken

from its regular commercial card; Resp. Ex. 911 as its regular Birmingham office destination card for Greer, S. C., giving the destination cost used from its record of land grant rates and showing the commercial price taken from its regular commercial price card; Resp. Ex. 912 as its regular Birmingham office destination cost card for Laurens, S. C., giving the price shown in its bid on destination cost and the commercial price taken from its regular commercial card; Resp. Ex. 913 as its regular Birmingham office destination card for Kelly, S. C., giving the land grant computations in connection with the destination cost shown on this bid referred to, and its commercial price taken from its regular commercial card at that point; Resp. Ex. 914 as its regular Birmingham destination cost card for Gaffney, S. C., giving the figure of destination cost arrived at under his direction for that destination, and also the commercial price shown at Gaffney taken from its regular commercial price card. All of these cards were prepared under his direction and
25358 supervision in the usual way.
25359 (RESP. EXS. 910, 911, 912, 913, and 914 were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Postelle, as to these cards, Respondents' Exhibits 910 to 914, without taking each card, can you tell me, in the righthand column, where it says "Quoted By," what that represents?
25360 A. Do you want me to mention the exhibit in each case, each card?

Q. Well, the quickest way you can do it. What does that stand for in the righthand corner?

A. The righthand corner of the card, Respondents' Exhibit 912, the abbreviation "CR" is commercial rate, and "SOU" is Southern Railroad.

On Respondents' Exhibit 913, in the righthand column, where it says "Quoted By," the abbreviation "CR" is commercial rate, and "SOU" is Southern Railroad.

Respondents' Exhibit 914, under that column, the abbreviation "SOU" is Southern Railroad.

Q. Is that the same as to the others in that group?

A. Yes, sir.

The witness identified Resp. Exs. 915-A and B to
25361 919-A and B as five copies of Alpha's regular Bir-

mingham office commercial price cards showing how it arrived at the prices quoted in those markets over a period of time, and used constantly by Alpha. These are his cards that he used in this transaction.

(RESP. EXS. 915-A, 915-B, 916-A, 916-B, 917-A, 917-B, 918-A, 918-B, and 919-A, 919-B, were offered and received in evidence.

Q. As to Respondents' Exhibits 911 and 914, I
25362 note that in each instance you have stricken out the last number, in one instance, 911, it is "8" and in 914 it is "6." Can you explain that?

A. Under Respondents' Exhibit 914, it shows the sixth decimal was "6," which was stricken out, and on Respondents' Exhibit 911 the sixth decimal, which was an "0" was stricken out, and on the line under "land-grant rates" where it says .551038; the "8" was stricken out. And this procedure was followed as I testified, I believe, yesterday, or previously, that for quite a number of years we had been going no further in our land-grant rates than the computation of the fifth decimal due to competition that we had found in the field previously.

Q. Now, taking up next, Mr. Postelle, Commission's Exhibit 1083, which is an abstract of bids received by the Department of Agriculture on October 7, 1936, did your company bid on that letting?

A. We did.

25363 The witness identified Resp. Ex. 920 A as a Birmingham office copy of Alpha's bid submitted on October 5, 1936, to the Department of Agriculture, Spartanburg, S. C., in connection with their proposal, to be opened on October 7, 1936; Resp. Ex. 909 as a Birmingham office copy of Alpha's regular form letter No. 2 used in connection with destination cost bids of this kind; Resp.

25364 Exs. 921 to 929 as Birmingham office destination cost cards which give land grant rates as quoted by different railroads. It [each card] gives the base figures used in connection with all points on this bid, and Alpha's commercial prices obtained from its regular commercial price cards.

The witness identified Resp. Exs. 930 A to 938 B as Alpha's Birmingham office commercial price cards used in connection with this bid showing its commercial prices and its record of what it has quoted at these points over a period of years. In the right hand column of Resp. Ex. 923,

the abbreviation "L. & N." shows that the price of land grant rates was quoted to Alpha by the Louisville & Nashville Railroad, and on Resp. Ex. 922, where it says
25365 "C. of G." it means that the land grant rates shown on this card were quoted to Alpha by the Central of Georgia Railroad. It is shown on this card under the column where it says "Quoted By".

Mr. Leisure: I offer in evidence at this time Respondents' Exhibits 920 through 938-B, inclusive (handing the said documents to Mr. Wooden).

L. Examination on Voir Dire by Mr. Wooden.

Q. Referring to Respondents' Exhibit 922, for identification, where it says "Mill Price in Boyles, Ala.," does that mean that is the base price at Boyles?

A. What is that question?

(Question read.)

25366 A. Why, yes, the price that we are using on this card is shown there as being $1.90, Boyles, Ala., plus the land-grant rates obtained from the Central of Georgia Railroad of .31714.

Q. That is true of all of these others where you have "Mill price in Boyles"?

A. Each of these cards show that the destination cost was based on a figure at Boyles.

Mr. Wooden: The same objection as to the other exhibits of the same type.

Mr. MacIntyre: If Your Honor please, this is one of the ten instances where Mr. Leisure referred to a few moments ago. He is now presenting them and there is no statement made as to that conditional information that he proposes to present to you through these exhibits other than what has already been presented to you by previous ones.

Trial Examiner Norwood: Well, I think we have decided to let in all of these papers in relation to this witness. We are going to study them and see if we can't determine a method which will shorten the procedure hereafter with respect to other witnesses and other Respondents.

The exhibits are received as marked.

(RESP. EXS. 920-A to 920-F, 921, 922, 923, 924,
25367 925, 926, 927, 928, 929, 930-A, 930-B, 931-A, 931-B, 932-A, 932-B, 933-A, 933-B, 934-A, 934-B, 935-A,

935-B, 936-A, 936-B, 937-A, 937-B, 938-A, 938-B, were offered and received in evidence.)

Direct Examination by Mr. Leisure (Continued).

Mr. Leisure: Before we leave these cards, Respondents' Exhibits 921 to 929, Mr. Postelle, will you look at them and tell me whether or not they were all entirely made up in connection with this particular bid?

The Witness: Well, looking over these cards, I find that they were not all made up entirely in connection with this bid; they were used in connection with this bid.

By Mr. Leisure:

Q. Yes, you said that, but I am not asking you about their being made up.

A. Well, these cards, these destination cost cards that I have been testifying about, are in constant use in our Birmingham office, and when we receive a proposal from the Government to put in a bid using land-grant rates we go to our files to find if we have already previously bid on that point; and if we find that we have we call the railroad and if there is no change in the land-grant rate we use that card, which is in constant use, but if we have not quoted on that point previously we ask for a land-grant rate and we make up a card in connection with that bid.

25368. Now, in connection with these cards, Respondents' Exhibit 921 shows that in addition to being used on this particular bid, Government's Exhibit 1083, we used it on a previous bid for this particular destination on July 24, 1936.

On Respondents' Exhibit 925, our destination cost card shows that it was made up and used in connection with a bid which we made to the Government on July 24, 1936, for Greensboro, Ala.

On Respondents' Exhibit 928 I find that the destination cost card for Linden, Ala., was made up and used in connection with the Government bid at that point on August 18, 1936, and all of these cards where the date shown is different from the date of the proposal it shows that we had previously used it, and when the proposal was received for Government's Exhibit 1083, and referring to this card we found that there was no change in the land-grant rates

after communicating with the railroad, and we used these cards in connection with that bid.

Q. Then, as I understand it, regardless of whether the card was made up for this particular letting, whenever it was made up, you have said that you did use them with reference to the items 1-A, 2-A, 3-A, 4-A, 5-A, 6-A, 7-A, 8-A, 9-A, in this particular letting—that is, you used them all?

A. Yes.

Q. The next Commission's Exhibit is 1087, being
25369 an abstract of bids received by the Department of Agriculture on July 30, 1936.

Did your company bid on that letting (showing document to witness)?

A. We did.

The witness identified Resp. Ex. 939 A to E as a Birmingham office copy of Alpha's bid to the United States Department of Agriculture, Spartanburg, S. C. dated July 27th, for the opening on July 30, 1936; as shown in this exhibit; Resp. Ex. 909 as a copy of a form letter No. 2
which he previously described in connection with
25370 these bids; Resp. Exs. 940 to 943 as Birmingham office destination cost cards used in connection with this bid, Resp. Ex. 939 A to E; Resp. Ex. 944-A to 946-A as Birmingham office commercial price cards definitely used in connection with this letting. He used commercial price cards with respect to other lettings which are already in evidence in the same manner in which he has testified.

25371 (RESP. EXS. 939-A to 939-E, 940, 941, 942, 943,
25372 944-A, 944-B, 945-A, 945-B, 946-A, 946-B were offered and received in evidence.)

By Mr. Leisure:

Q. I would like to call your attention again to an exhibit of yesterday, Respondents' Exhibit 903, and ask you whether or not that card was used also in connection with the letting represented by Commission's Exhibit 1087?

A. To answer your question, Respondents' Exhibit 903 was used in connection with our bid of July 27th to the United States Department of Agriculture.

Q. When you say "used" you mean it was used—

A. Used in the regular way of handling these bids and getting these prices.

Q. Calling your attention, Mr. Postelle, to Commission's Exhibit 1092, which is an abstract of bids received by the Department of Agriculture at Washington, D. C., for opening on August 18, 1936, it appears that that date was later extended to August 28, 1936. Did your company bid on that letting?

A. We did.

25373 Q. Calling your attention, Mr. Postelle, to Commission's Exhibit 1092, is Respondents' Exhibit 947 the bid that you submitted in connection with that letting?

The Witness: Yes, we bid on that, and this Exhibit 947 is a copy of our bid.

By Mr. Leisure:

Q. Did you use Respondents' Exhibit 949 in connection with that bid in a similar manner, where you used such cards and other bids which you have already described?

The witness identified Resp. Ex. 948 as a letter written under his supervision in connection with this bid.

25374 This letter is similar to the letter known as form letter No. 2 with the exception that there is a slight change.

(RESP. EXS. 947-A to 947-E, 948, and 949 were offered and received in evidence.)

By Mr. Leisure:

Q. I notice there is marked here "Addendum No. 1" on Respondents' Exhibit 947-A to E. What does that mean? On the second page.

A. Addendum No. 1 attached to our proposal is under Exhibit 947-C. There is a correction by the U. S. Department of Agriculture changing the time of opening of the bid and also changing quantities under item 3.

Q. And as to the other two papers attached?

A. Are you asking about these (indicating)?

Q. Yes.

A. Exhibit No. 947-D is a part of the bid which was part of the specifications sent to us by the Government and making or suggesting that we make certain notations as to freight classifications and declined prices, and

25375 we used this in our bid and referred them to the attached letter, No. 948.

947-E is part of the information and proposal as sent to us by the Government in regard to delays and damages.

Q. Can you tell us whether or not Respondents' Exhibits 934, 936, 937, and 938 were used in connection with this letting as you have already described in other bids?

A. These four cards numbered Respondents' Exhibits 934-A, 936-A, 938-A, 937-A, are used in connection with this bid, as I have testified on previous proposals of this kind.

Q. And were Respondents' Exhibits 925, 928, and 929 used in connection with this bid in a similar manner that you have already testified that other cards of that character were used in other bids?

Respondents' Exhibit 929 for Ashland, Ala., I find was not used in connection with this bid; it bears date of a later letting, and shows a different price, destination cost price, per bag than the figures shown in this proposal.

25376 A. I have just testified in regard to Respondents' Exhibit 929 at Ashland,—was not used in connection with this, and I find in making calculations on Respondents' Exhibit 928 for Linden, Ala., that it was, as it shows a destination cost of .55974, as shown in our bid, and I would like to make the same computation before answering on Respondents' Exhibit 925.

25378 By Mr. Leisure:

Q. I notice in Exhibit 949; Mr. Postelle, you seemed to have stricken off three numbers at the end. Can you explain that (indicating)?

A. Well, Respondents' Exhibit 949 shows that we dropped decimals beyond the fifth decinial, as I testified to previously.

Q. Now, as to all of these lettings, you have told us how you arrived at the bid which you made.

Let me ask you as to Commission's Exhibits 1094, 1087, and 180, and 1092. Did you have any contact, in any way, with your competitors as to how you would make that bid?

A. Absolutely not.

Q. You have told us that Respondents' Exhibit 949 is used in connection with the last bid.

A. Respondents' Exhibit 949 for Auburn, Ala., shows that it was used on a bid to the Government on July 24, which is previous to that, and in view of the fact that the

card is made up on a per-barrel basis, and the bid
25379 was made up on a bag basis, I was merely making computations to find out what the per-bag basis was.

Q. Next, Mr. Postelle, I should like to take up Commission's Exhibit No. 1090, which is an abstract of the bids received by the Department of Agriculture on August 24, 1936. Did your company bid on that letting?

A. We did.

The witness identified Resp. Ex. 950 A to E as
25380 Alpha's bid in connection with Com. Ex. 1090; Resp. Exs. 951 and 952 as cards used in that connection; Resp. Exs. 953 A and B and 954 A and B as cards also used in that connection.

Q. When I say "used" I mean you used these cards in a manner similar to the manner in which you have already testified to as to previous bids?

A. Both the cost cards and commercial price cards are used in our regular way of making these bids.

Q. Does that also apply to Respondents' Exhibit 909?

A. Yes, sir.

(RESP. EXS. 950-A to 950-E, 951, 952, 953-A, 953-B, 954-A, 954-B, were offered and received in evidence.)

By Mr. Leisure:

Q. Can you tell me whether you used Respondents' Exhibit 931 in this letting?

25381 A. This last proposal there? Yes, this is our regular—Respondents' Exhibit No. 931-A is our regular Birmingham office card that was used in connection with this bid, Dadesville, Ala.

Q. I have another Commission exhibit here, Mr. Postelle, that bears the number of 1086, and it is a longhand abstract of bids received by the Department of Agriculture at Washington, D. C., on July 24, 1936. The bids seem to have been opened on July 28, 1936. Did your company bid on that letting?

A. We did.

The witness identified Resp. Ex. 955 A to E as Alpha's bid to the United States Department of Agriculture dated July 18 and opening on July 24, 1936; Resp. Ex. 956 as a copy of telegram sent from the Birmingham office under his instructions to the Department of Agriculture
25382 calling attention to this bid. He did not write the letter dated July 21, 1936, Resp. Ex. 957, to the

Department of Agriculture. The witness identified Resp. Ex. 957 as a letter used by the Birmingham office in connection with these bids and is practically in its entirety the form letter No. 2 about which "we" have been testifying, and which letter is used in connection with these bids and made up under his direction; Resp. Ex. 958 as an addendum from the U. S. Department of Agriculture in connection with this bid, and in connection with Alpha's telegram to which witness referred under Resp. Ex. 956. In other words, it relates to the same subject in regard to that telegram. The witness identified Resp. Ex. 959 as a letter prepared under his direction and supervision and sent to Mr. McAshley in connection with this bid on July 23.

25383 (RESP. EXS. 955-A to 955-E, 956, 957, 958, and 959 were offered and received in evidence.)

By Mr. Leisure:

Q. Do you recollect, Mr. Postelle, whether or not Respondents' Exhibits 921 and 925 were used in connection with this letting?

A. Respondents' Exhibits 921 and 925, dated July

25384 24, 1936—

A. These cards is evidence of another case where the card shows the per-barrel rates, the bid shows bags. I am sure that it is the same one, but I should be allowed before I make the answer to prove that, unless you—

By Mr. Leisure:

Q. Do you know?

A. I know on that bid, on that date, that is what it is for.

Q. Without repeating the numbers of the exhibits here, Mr. Postelle, will you just tell me whether Respondents' Exhibits 930, 936, and 934 were used in connection with this bid, if you know?

A. They were.

Q. Thank you.

I wish to take up next, Mr. Postelle, Commission's Exhibit 1088, it being an abstract of the bids received by the Department of Agriculture at Jackson, Tenn., on July 17, 1936. Did your company bid on that letting?

25385 The witness identified Resp. Ex. 960 A and B as a copy of Alpha's bid to the Department of Agricul-

ture under Government's Ex. 1088; Resp. Ex. 961 as a copy of the Birmingham letter which is similar to form letter No. 2 to which witness already referred, and used in connection with this bid; Resp. Exs. 962 to 966 as cards used in connection with this bid in the same manner as witness has previously testified in regard to these destina-
25386 tion cost cards; Resp. Exs. 968 A to 973 as Birmingham office commercial cards used in connection with this bid. In making up these bids, Alpha does not attempt to copy all of the wording in the bid that it sends out. It merely fills in the blank spaces and keeps a copy of the destinations and prices used. They are not on the
25387 usual form as previous bids were. He can not say how it happens that on that same copy, some of it is in carbon and some of it is in original typewriting unless this yellow copy of Alpha's bid was sent to them with this proposal and they filled in the blank spaces. He testifies of his own knowledge that the copy as used is the copy that was submitted with reference to Com. Ex. 1088.
25388 (RESP. EXS. 960-A, 960-B, 961, 962, 963, 964, 965, 966, 967-A, 967-B, 968, 969, 970-A, 970-B, 971-A, 971-B, 972-A, 972-B, 973-A, 973-B, were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Postelle, I notice on these cards, Respondents' Exhibits 962 through 967, there are certain pencil memoranda on the face of each one of them. What are they, do you know?

A. The pencil memorandum which we have on these cards is merely a notation to show that our commercial price which is shown in the upper righthand corner of the card was obtained in using base figure of Marquette, plus the commercial freight to the destination.

Q. When were those cards prepared, Mr. Postelle, if you know?

A. Oh, before answering that may I continue with my other answer.

25389 Q. Oh, certainly. I thought you had finished.

A. (Resuming) Whereas, the cards show that in each instance the destination cost card with reference to land-grant rates was shown as being lower from a different mill other than Marquette, and our destination cost was based upon different—that is, rather on a different base figure, and a different base mill.

Q. Then will you answer the last question?

A. These cards show in each instance the date it was prepared, and the date that we obtained the land-grant rate from the railroad, that was the date that the card was made up. Some of them were prepared on May 14, 1936.

Q. As I understand you, you used all six cards in computing the prices bid in these, in 1-A, 2-A, 3-A, 4-A, 5-A, 6-A in this letter?

A. We did.

Q. I would like to call your attention to Commission's Exhibit 1085-A to C, being an abstract of the bids received by the Department of Agriculture on June 22, 1936.

Did your company bid on that letting?

25390 A. We did.

The witness identified Resp. Ex. 974 A to E as the letting with reference to Com. Ex. 1085; Resp. Ex. 976 as a card that he used in this instance in the manner in which he has already described as to the other bids. The same is true of Resp. Ex. 977 A and B. The witness identified Resp. Ex. 975 A to C as a standard Government instruction to bidders and used in connection with this letting.

25393 (RESP. EXS. 974-A to 974-E, 975-A, 975-B, 975-C, 976, 977-A, 977-B were offered and received in evidence.)

By Mr. Leisure:

Q. Were Respondents' Exhibits 941, 942, and 943 used as you have already described in connection with this letting?

A. They were.

25394 Mr. Wooden: Your Honor, I propose to agree that every paper shown to the witness would be identified by him as being what it purports to be and would waive any further identification, if that will help to expedite proceedings.

Mr. Leisure: All right.

The next exhibit that I was about to take up is Commission's Exhibit 1339, and under Mr. Wooden's stipulation I offer the following documents in evidence with relation to that letting.

25395 They are numbered Respondents' Exhibits 978 and 979.

(RESP. EXS. 978 and 979 were offered and received in evidence.)

Mr. Leisure: The next Commission's exhibit I wish to address the Examiner's attention to is that of No. 337-K, being an abstract of bids received by the State Procurement Office at Montgomery, Ala., on December 16, 1936.

25396 Under Mr. Wooden's stipulation I offer the following exhibits in evidence as being part of that same transaction.

Trial Examiner Norwood: They being the office cards and data from which the prices were figured; is that right?

Mr. Leisure: Yes, sir.

25397 (RESP. EXS. 980, 981-A, 981-B were offered and received in evidence.)

25398 CHARLES P. POSTELLE thereupon resumed the stand and testified as follows:

Direct Examination (Continued)

Mr. Leisure: Your Honor pleases, I have been thinking over the noon hour, and I wonder, in view of the stipulation, and what we are putting in now, if we cannot save still further time instead of going ahead and just marking papers, by simply saying as to these bids in the southeastern section—

I would be willing for Mr. Wooden to phrase that any way he wants to so he won't think I am using some particular language—

Trial Examiner Norwood: Yes.

Mr. Leisure: —similar to a stipulation we have on the record now, with regard to the fact that the witness would so testify.

Trial Examiner Norwood: Yes.

Mr. Leisure: If you want to save time that way, even as to marking exhibits, I am willing to try to do it, and then we can end with this witness right away.

Trial Examiner Norwood: You will have to have your stipulation refer to certain numbers, will you not?

25399 Have to have them marked.

Mr. Wooden: They will have to be numbered, anyway.

Mr. Leisure: If we can avoid numbering exhibits, and simply say as to Commission's exhibits covering the southeastern territory the witness would testify as he has testified in the past, or any language that Mr. Wooden wants to adopt.

Mr. Wooden: That is all right.

Mr. Leisure: That Mr. Wooden feels is satisfactory.

Mr. Wooden: That language is all right.

Mr. Leisure: Sir?

Mr. Wooden: That language is all right.

Mr. Leisure: Very good, then we can go right on, then.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: Mr. Leisure, would you feel that the stipulation would be in point, if it stated that the witness would so testify—that it may be taken that he had so testified?

Mr. Leisure: Yes, than you, Mr. MacIntyre, that should be added.

Mr. Wooden: Of course, I take it that that applies to Exhibits of the same type as already examined.

Mr. Leisure: Oh, of course, I don't mean anything new, and I mean only as to exhibits you have put in
25400 evidence, only as to bids which you yourself have put in.

Mr. Wooden. Yes.

Mr. Leisure: Well, then, I would like to ask you, Mr. Postelle, then, not only as to the other exhibits in the southeastern territory, which your office handled, and on which your office bid, and not only as to those which I am not offering, but as to the ones I have offered, Commission's Exhibits 1090, 1086, 1088, 1085, 339-J, 337-K,—as to any and all of those,—whether you had any communication with your competitors in any way as to what price you would bid or how you arrived at your price?

The Witness: Absolutely not.

By Mr. Leisure:

Q. Now, then, I would like to call your attention to an exhibit here of the Commission bearing No. 547 3-W to 3-Z, which is a copy of the minutes of the meeting of the sixth district of The Cement Institute held at Faragut Hotel, Knoxville, Tenn., on July 17, 1935. These minutes, Mr. Postelle, indicate that you and Mr. Coogan of your company were present representing the Alpha Cement Company.

Were you present at that meeting?

A. Yes, I remember attending that meeting.

Q. And Mr. Coogan was also present?

A. I attended that meeting in company with Mr. Coogan.

25401 Q. How long were you there?

A. We were only there a short time, because Mr. Coogan was very anxious to see his grandchildren and daughter in South Carolina and in view of the fact that I was also arranging to attend, contact, a convention right near Mr. Coogan's daughter's home, which is Myrtle Beach, S. C.,—at the convention,—why, we left right after luncheon, as I remember it; probably around 1 or 1:30.

Q. Now, while you were at the meeting, can you tell us what matters were discussed, Mr. Postelle?

A. Why, the only matters that I remember being discussed at all, Mr. Leisure, was quite a little discussion about whether or not the Institute in the Southeast would hire men to go out in the field and check contracts.

Q. Now, I show you Commission's Exhibit 547-4-B, which is a copy of a letter dated July 24, 1935, which purports to be written by the trustee of the Sixth District, and it refers to a unanimous agreement of the persons present at this July 17th meeting on a method of marketing cement, and interpretations in connection with it.

Let me ask you, was there any discussion of the method of marketing cement, or as to such interpretations of any such method, at this meeting that you attended?

A. There positively was not while I was there.

Q. Did you receive any letter in the form of this
25402 Commission's Exhibit 547-4-B, with certain enclosures, from the trustee of the Institute (showing document to witness)?

A. I don't remember ever seeing any such letter.

Q. Mr. Postelle, do you recall the announcement of policy issued by the Alpha Company in April of 1935?

A. Yes, I remember when it was announced. I don't remember the date.

Q. Did you get any instructions from your superiors? I mean from Mr. Coogan with respect to the use of that policy in the southern territory?

A. I obtained the instructions from Mr. Coogan when he was in Birmingham. He was down there on a visit, and we discussed our policy.

Q. Do you recall having received any written instructions from Mr. Coogan or from the Easton office as to the manner in which this policy should be interpreted?

A. Why, no, because the policy we announced spoke for itself.

Q. Will you look at Commission's Exhibit 547, which is a method of marketing cement. It starts with 4-D and several pages following. I would like to ask you whether or not you ever saw that paper before it was shown to you in connection with this case?

A. No, sir; I never saw anything like that.

25403 *Cross-Examination by Mr. Wooden.*

25417 Well, as I have testified, Your Honor, on the stand for the last two or three days, in regard to these cards, and how we made them up, and how I personally helped to make these cards up, we have in all cases in making our prices tried to get—to meet the lowest price that we find in the field regardless of how it is made up, whether it is an arbitrary price that we find, or what.

Trial Examiner Norwood: But these cards do not cover sales that were made at a price found in the field to meet that, do they? The cards you have there,—to illustrate your method of figuring out your mill price for the purpose of bidding.

The Witness: Why, certainly they do, Your Honor. How could we make our cards up as we have made them unless we find competition in the field and know how to determine that it is competition?

25422 A. Well, I wouldn't say that in every instance that we find a price that that was the condition.

By Mr. Wooden:

Q. Isn't that the usual condition that you find?

A. Mr. Wooden, I have just tried to explain for the last two or three days exactly how we make up these cards which show a continuous record of our—

Trial Examiner Norwood: Now, I wish you would just answer his question.

25423 Read that question.

Don't argue with him.

(Question read.)

Trial Examiner Norwood: Now, is it or is it not?

The Witness: Well, I would say that in getting our prices in the field, that we are able to take the freight rate from that particular mill and find out just what is being quoted. Now, just what you call that, that would be something else.

By Mr. Wooden:

Q. If it is lower than any of the known bases you had the information of up to that time, are you at liberty to meet it without the consent of your head office?

A. I most assuredly would meet that price if I found it in the field.

Q. Well, no. I would like an answer to my previous question as to how much discretion you have in quoting prices other than the lowest combination of base price plus freight.

A. Well, I have just told you, Mr. Wooden, that I have the authority from my superiors that when I am in the field trying to get business, and I find a lower price, and I mean that I find something besides just hearsay, because you can't put any dependence a great number of times on some of the contacts that you are soliciting, why, I have the authority to meet that, if we decide we want the busi-
25424 ness, and if it is a satisfactory return to our company, because in the final analysis that is what we want, the best price that we can get meeting the lowest competition.

Q. Haven't you had instructions from your head office to use the lowest combination of base price plus freight in quoting destination prices?

A. I don't know of any such instructions.

Q. Why do you make up these cards, then, that show the lowest combination of base price plus freight?

A. I just testified as to how we made our prices, that if we find lower prices in the field—

Mr. MacIntyre: Now, if Your Honor please, that is not an answer to the question.

Trial Examiner Norwood: Let him finish his answer, please.

A. (Continuing) We get all of the information together and we—and it is coming in immediately, when there is any change in the price in the field. We are getting it from our dealers and from our salesmen, and we are—it is very easy to determine from the freight rates

which we have from all the shipping points in our area just how to meet that price, and we immediately get in touch with our superiors to find out what to do.

By Mr. Wooden:

Q. Why, if that is all you do—why do you need to bother about the base prices or freight from basing
25425 points? Why don't you just meet the delivered price that you find in the field? Why work out all of this rigamorole on the cards about base prices and freight from basing points if all you do is meet the competition you find in the field?

A. Why, I am not running the Alpha Company. I can't answer that question.

Q. Well, you are running the Alpha Company's sales in eight States and you use these cards. All this is done under your instructions.

Mr. Leisure: That is no question. That is just an argument. I object.

Mr. MacIntyre: That is asking him why.

Trial Examiner Norwood: No, I think not.

Mr. MacIntyre: It is asking him why.

Mr. Leisure: May we have it read? May we have it read?

Trial Examiner Norwood: Read it.

(Question read.)

By Mr. Wooden:

Q. Why, then, did you use all this mathematical computation of base prices and freight if all you do is to meet the destination price as you pick it up in the field?

A. Well, Mr. Wooden, do you think that that is a question that you are asking to refer to any kind of an orderly procedure for a company such as ours?

25426 Q. Mr. MacIntyre: If Your Honor please, that is not the answer to the question. The question is why does he do it.

The Witness: I just answered that I didn't know why they did it; I wasn't running the Alpha Company.

By Mr. Wooden:

Q. Oh, I see. The sales manager for eight States doesn't know why he does things; is that right?

How much discretion do you have under those conditions, when you don't know why you are doing things?

A. Well, I would answer that by saying that I am southern sales manager, not southern policy manager.

Q. As a matter of fact, you don't have much discretion when you don't even know why you do things?

Mr. Leisure: That is argument, if Your Honor please.

A. Well, Mr. Wooden, I am entirely too busy trying to sell cement in the field to worry about that question.

25430 Q. Did you receive from the Trade Practice Committee information as to the prices of your competitors at given destinations?

A. To my knowledge, I never received anything at all from the Trade Practice Committee, prices or anything else.

Q. Did you ever furnish land-grant information that you obtained so that your competitors might be advised of it through The Cement Institute?

A. Not to my knowledge; no, sir.

Q. Did you ever furnish land-grant information to your home office for that purpose?

A. I don't remember any such transaction, Mr. Wooden.

25431 Q. Did you receive from The Cement Institute or from your home office information regarding land-grant rates that had been supplied by your competitors?

A. I don't remember.

Q. Do you mean to say that the land-grant rate information shown on all these cards that you put in as exhibits was obtained by you and none of it was obtained from The Cement Institute?

A. I testified as these bids went in and these destination cost cards were shown, Mr. Wooden, that in each case we obtained the land-grant rates from the point shown on the card.

Q. Well, my question is—

A. From the railroad.

Q. Do you mean to say that you did not get any land-grant information from the Institute?

Q. Did you personally obtain the information on
25432 land grant rates from the railroad companies?

A. From the railroad companies—I doubt if I obtained that information, but the information that I have given you in regard to the U. S. Engineer's Office, in practically all cases I obtained that from the Government be-

cause I personally was interested in all those bids. As far as the land-grant rates shown on here, we have got more people in the office besides me, and I couldn't be expected to do everything physically as to making up the cards and everything that is shown there.

Q. If you didn't get it, who did?

A. Mr. Bethune has been there for 10 years in this office, and we would sit down together and get the information and make up the cards.

Q. Do you know whether or not Mr. Bethune got any information from The Cement Institute concerning land-grant rates?

A. I don't know. I don't remember any such occasion.

Q. Did you get any information regarding land-grant rates from railroads on which your plant was not located?

A. Well, the card, Mr. Wooden, shows that we obtained land-grant rates from railroads all over the South.

Q. Do you say that you got that directly from railroads even though you were not located as a shipper on their line?

A. Wherever it says on there we got the rate from a certain railroad, we got it from that railroad.

Q. How do you know that?

25433 A. Because I know that the exact—the physical working or how these are made, and, as a matter of fact, I was responsible for this card, both cards, being made up.

Q. Do you have any recollection or knowledge at all, Mr. Postelle, of receiving any land-grant rate information from The Cement Institute?

A. I do not.

25439 Q. Referring to Respondents' Exhibit 830, being your pink card for Nashville, Tenn. (showing to witness).

A. Yes, sir.

Q. Why is it that there is no account taken on that card of the mills located at Knoxville, or Chattanooga, or Hermitage, at or near Nashville?

A. Well, the only answer to that that I could give is that if we had found the price that they were quoting in the field, that was the lowest competition, we would certainly meet it and put it on the card. That's the only answer I can give you.

Q. Well, isn't the reason that those mills are not basing-point mills, isn't that why they were not put on that card?

A. Well, I don't know what you mean by basing-
25440 point mills, Mr. Wooden. I have testified all along regardless of where the mill is located, and who ran it, if we find a price in the field that they are quoting that is lower than ours, we are going to meet it—that is, unless we wanted to get out of that market.

Q. Why didn't you put the mills right in the vicinity of Nashville on the card represented by Respondents' Exhibit 830?

A. Well, I have just answered you. I said that if we had found a quotation issued by any one of the mills you are talking about, we would meet the competition.

Q. You found, didn't you, quotations from those mills in the field that are not on this card, and yet located near Nashville?

A. Well—

Q. Why didn't you make a record of them?

A. If we found quotations in the field from those companies that were on the same—contributing the same price that we met there, why, we were meeting them as much as anybody else—

Q. Well—

A. —we were not interested in their price, or anybody else, except finding the lowest price in the field, and meeting that.

Q. Do you mean to say, Mr. Postelle, that you don't know of any difference between a basing-point mill and a non-basing-point mill,—that you don't know what that means?

A. I didn't testify that I didn't know what it meant.

25441 Q. Well—

Trial Examiner Norwood: Tell us now.

The Witness: Well, I told Mr. Wooden this week on one of his questions that it all depended on who was making the statement as to whether you called it a basing point at mill or a base figure. I have testified that we find in the field quotations issued by our competition, if it is lower than we are, we are going to meet the lowest price we can find, as long as we can stay in that market.

Trial Examiner Norwood: Well, answer his question now.

Read the question.

(Last question read by Reporter.)

Mr. Werle: The witness answered that.

Trial Examiner Norwood: Tell us whether you understand what the term "basing-point mill" refers to.

The Witness: Well, I understand—I understand this that I have found in the field—

Trial Examiner Norwood: Now—

Mr. Porter: Your Honor, he is trying to answer the question.

Trial Examiner Norwood: Do not answer some other question. Just answer that question.

Mr. Porter: He is answering your question now.

25442 Mr. Wooden: No.

The Witness: We find in the field in our experience that there are some mills that have never gone out and quoted lower prices than we were quoting at that particular time, and I assume that is because that mill didn't want to do it. I don't know anything about what the other mills should decide.

By Mr. Wooden:

Q. And what do you call such mills?

A. I don't call them at all; I just—

Q. You don't call them either basing-point mills or non-basing point mills?

A. I would call it a mill that I did not use as a base figure, unless I find that they had instituted a quotation that was lower than ours; then I would certainly meet it, and show it on the card.

Q. Well, aren't these points that are specified in all of these pink cards, such as Respondents' Exhibit 830, aren't those basing-point mills, or basing points, that are abbreviated there in the column that is headed "Made On"?

A. I suppose that you could call it that. That is the term you refer to it by. I am just used to referring to it as "base figure."

Q. Haven't you used that expression yourself in the course of your business,—a basing-point mill?

25443 A. I suppose I have.

Q. Yes. Isn't it a matter of common use in the industry?

A. Not with me.

Q. Has the mill at Knoxville ever been a basing-point mill?

A. I don't remember that—that situation right at this

time. It may have been. It may have been at times in our records; I could find where it was, I don't know.

Q. But it would be prior to this 10-year period shown on these cards, would it not?

A. Well, I don't know whether that would necessarily follow. This was Nashville, Tenn., you are talking about (referring to card).

Q. Do you mean to say that there might be a basing-point mill very close to Nashville and you wouldn't have it on the Nashville card when you got these more distant points on there?

25444 A. Well, my answer to that would be, if there is a mill at Nashville that we have found quoting prices in that vicinity lower than we are quoting, we would certainly meet the competition if we wanted to stay in the market.

Trial Examiner Norwood: Well, would you have it on the card?

The Witness: Well, any place we would meet, whether it be an arbitrary mill or what not, if they were quoting prices in the field lower than ours, we would meet it and use that as a base figure in settin our prices.

Trial Examiner Norwood: Would you have that on the card?

The Witness: Yes, sir.

25450 Q. Do you know whether Mr. Bethune got the information that is on such cards from compilations put out by The Cement Institute?

A. Well, to my knowledge he never has gotten them anywhere except the authority shown there. That is the reason that we have the authority there. It shows where we got it.

Q. Do you know of your own knowledge that Mr. Bethune obtained this information direct from the railroads and not from The Cement Institute compilation?

A. I do.

Q. Do you say of your own knowledge that Mr. Bethune did not have The Cement Institute land-grant compilations?

A. Not to my knowledge, that he ever had them.

Q. And you believe that you would have known it if he had?

A. I expect that I would have known it.

25451 Q. You never saw one yourself?

A. No, sir.

Q. Does that go for all the other land-grant cards that you have put into evidence?

A. Every land-grant destination cost card that I have testified about there today shows specifically where we obtained that rate, and I called the attention—called your attention to the fact exactly how that card was made up and where we obtained the land-grant rate. In some cases they were not land-grant rates, and we had a commercial rate on it.

Q. Do you say that Mr. Bethune got that information by writing to the railroads other than those on which your shipping point was located?

A. We got those rates invariably from the railroads by telephone conversation.

Q. Mr. Bethune did?

A. Yes.

25477 Q. Referring to Respondents' Exhibit 900, one of your land-grant compilations for Anderson, S. C. (Indicating). I note on there it says 1.85 mill price in Charleston, S. C. There wasn't any mill there, was there?

A. Well, Mr. Wooden, this card, as I told you, was in constant use, and is a mimeographed card. We wouldn't go to the trouble of tearing up this card and making a new one just to take care of the fact that Charleston didn't have a mill.

Q. You haven't a mill price in Charleston. What price was it in Charleston,—the base price, wasn't it?

A. The card shows very plainly that it was the base price that we were using.

Q. All right.

Mr. Postelle, since you have your mill there in Alabama running at less than 50 percent of capacity, as Mr. Coogan said, I believe—and since you say that you are anxious to sell all the cement you can produce, would you have the discretion to take an order for a hundred thousand barrels by cutting the price a half cent a barrel, if you could get get the business?

25478 A. Well, Mr. Wooden, my answer to that would be that regardless of the size of the order I would hate to admit to my superior that we would have to go out and get a lower price for Alpha cement than anybody else. I wouldn't attempt to.

Redirect Examination by Mr. Leisure.

25479 Q. Mr. Postelle, Mr. Wooden showed you a group of our exhibits. I want to call your attention to the white cards and the pink cards in the exhibits running from Respondents' Exhibits 817 to 984, and, as I understand your testimony, those cards were all made in the office of which you are the head, namely, the office of the sales manager in the Birmingham office.

A. Absolutely.

Q. Every one of them was made in your office?

A. Absolutely.

Q. I think you have already said they were made in the regular course of business?

A. Yes, sir.

Q. And you can vouch for the accuracy of each and every card?

A. I can.

Recross Examination by Mr. MacIntyre.

25480 Q. Mr. Postelle, you have stated that this information as to land-grant rates appearing on those white cards within that series of exhibits was information that was secured by Mr. Bethune.

Is that your testimony?

A. I did testify that.

Q. Do you know whether or not he saw Cement Institute compilations of freight rates—I mean land-grant rates—before he gave you that information?

A. I answered that question to Mr. Wooden.

Q. I am asking you now whether or not you knew 25481 that he saw those, The Cement Institute compilation of land-grant rates, before he handed you that information?

A. I said I had no recollection of any such.

Q. —do you know whether or not he based it, in whole or in part, upon such information?

A. I know that he did not; he based it on the rates that we obtained from the railroad.

Q. How do you know he did not base it on any information he got from The Cement Institute if you don't know he saw it?

A. I told you we didn't have it, in my recollection.
Q. You don't know whether he had it or not, do you, is that your testimony?
A. I have already testified that I didn't know, but I was sure that he didn't because I had never seen that, and if he did get that I would know about it.
That's my testimony.

By Mr. MacIntyre:
Q. Is it your testimony that he did not get them?
A. Well, I would say that he did not.

25483 Brooklyn, N. Y.,
October 24, 1939

25484 A. M. FELLOWS, called as a witness on behalf of the respondents, being first duly sworn, testified as follows:

Direct Examination by Mr. Lessay:

I am western sales manager in the western office
25485 of Alpha and have held that position for 10 or 12 or 15 years. I first went into the cement business in Spokane, Washington, with the International Portland Cement Company, Ltd. about 1912 or 1913. Just prior to that, I was with the Washington Brick, Lime & Sewer Pipe Company, a retail building concern in Spokane, with which I started as a collector and salesman. Shortly after I was there, there was a reorganization and I was made purchasing agent. My first connection in the manufacturing end of cement was after I left the Washington Brick, Lime & Sewer Pipe Company when I went with the International Portland Cement Company, Ltd. The International
25486 Portland Cement Company, Ltd. has no connection whatever with Lone Star. You will notice the "Ltd." on the end of it; there is considerable Canadian capital in it.

25488 Q. Now, Mr. Fellows, as sales manager of the Alpha Company, did you have any authority to determine prices or the price policies of the Alpha Company in your territory?

25489 A. No, sir; that was—I was working under Mr. Irvin while he was alive; upon his death, I then worked directly under Mr. Coogan's jurisdiction. I had no authority to determine sales policies at all.

Trial Examiner Norwood: In what capacity was Mr. Irvin acting?

The Witness: He was vice president in charge of the Alpha interests in the West.

By Mr. Leisure:

Q. You say that was in charge of Mr. Coogan. To what extent did Mr. Coogan determine the actual prices that were to be quoted by your company in that area?

A. Well, the general policy of the Alpha Company, the instructions we had from Mr. Coogan was to meet the lowest quoted prices that we found in the field, and we used a base plus freight, whichever made the lowest combination, used our own base plus freight as long as it was the lowest, but if we found lower, to meet it.

Q. Was there any base in that western territory?

25490 A. Yes. When we started to sell cement, it was known as Spokane brand, we determined as near as we could what base was being used at Metaline Falls. That was a plant operated by what was known as the Inland Portland Cement Company. It later became a Lehigh plant. We determined as near as we could what they were using, and when I started out on the road, as I remember it, the first place that I stopped at was at Kendrick, Idaho. I remember that because that is the first traveling job that I had. And I was talking with the dealer at that point. I told him, upon his inquiry, what the price was, and he told us—he told me that we were 10 cents too high. Well, that was my first experience, and I telephoned our sales manager, Mr. Beery, and told him what I had found out there, and he said he had had the same reports from other salesmen.

Mr. MacIntyre: May we have the date of that fixed, if you please?

By Mr. Leisure:

Q. When was that, Mr. Fellows, if you know?

A. Well, it was either 1912 or 1913. I have forgotten just when we did start, but it was shortly after I went—when I first went there, I went out to the laboratory and

worked out of the laboratory for a month or two, and then we started our sales effort in the spring, and it was either '12 or '13.

Q. But at any rate, as I understood you, you figured that base in the western territory when you used to com-
25491 pute the prices?

A. When we started we used the Metaline Falls base, because that was the nearest plant of anywheres around. The other plants were down in California and Colorado and Montana. Irvin, Wash., is where our plant was, the International plant, and it later became a base.

Q. Now, you told us that prior to your experience with the manufacturing end of cement, you were in the building material business?

A. Yes, sir.

Q. Witht his company—I think you said the Washington Brick, Lime & Sewer Pipe Company? Was that the company?

A. Yes, sir; the Washington Brick, Lime & Sewer Pipe Company operated a retail building material concern business in Spokane at the same time they were manufacturers of sewer pipe, terra cotta, common, and face brick. We had four different plants.

Q. Was cement one of the products which you sold?

A. That we sold; yes, sir; as a building concern.

Q. I don't recall whether you told us what your position was with that company?

A. Well, I eventually became purchasing agent, was purchasing agent when I left there and went with the International.

Q. During that period of time, Mr. Fellows, from what cement mills did you get your quotations to purchase cement?

25492 A. At that time we were buying cement from the Golden State Portland Cement Company, I think was the name. It was down in California, and from either Three Forks or Trident Portland Cement Company. The Three Forks Cement Company, I think it was, and Metaline.

Q. How, if you recall, were your prices quoted to you then? I mean, as purchasing agent for this building supply company, did you receive quotations from these cement manufacturers f.o.b. mill or f.o.b. destination, if you recall?

A. No, f.o.b. destination. That is the way we wanted it.

Q. Now, you added "that is the way we wanted it." What do you mean by that?

A. We wanted to know what it was going to cost us at Spokane. We didn't have any particular traffic department of our own, and if we bought it from Trident, Montana, or down in California, there is considerable freight involved there, considerable distances, so we wanted to know what it was going to cost us at Spokane.

Q. Well, now, do you remember, Mr. Fellows, as to these prices whether or not they were quoted to you by these different companies when they were quoted to you by these different companies—do you recall whether or not they were identical or did they vary among the three companies?

A. Well, they eventually became identical at some time or another. One company might change their price,
25493 a lower price or a higher price, but eventually the other companies would meet whatever prices we had.

Q. Can you fix the time when you were employed by this International Company that you have already described?

A. Well, it was between, as I say—I started with them either in 1912 or in '13, in January, and stayed with them until the World War, outside of the time that I was down on the border, also.

Q. I want to find out, if you know, whether that company was a member of any association of cement manufacturers?

A. As far as I know, they were not at any time; at no time that I was with them did I hear that they belonged to any.

Q. You went with the Alpha Company, I think you said, about 1923; is that correct?

A. No, I think it was 1920.

Q. Was it—

A. 1920.

Q. All right.

What, if you know, was the policy of that company when you went with it as to whether it would meet the lowest price of any competitor, that any competitor quoted at a given destination, or whether it would quote a higher or lower price? Do you remember about that?

A. Well, our general instructions were to meet the lower

quoted prices, whatever price we found quoted in the
25494 the field that was lower than we were quoting.

Q. I would like to call your attention, Mr. Fellows, to an exhibit put into this case by the Commission, and given the exhibit number, Commission's Exhibit No. 1899-A and B. This purports to be a bid, or, rather, a tabulation of bids to the Illinois Department of Public Works on a highway letting of March 22, 1929. It seems to indicate that your company bid on that letting; is that correct?

A. I believe we did. (examining document). Yes, sir.

The witness identified Resp. Ex. 982 as Alpha's worksheet covering a bid to the State of Illinois in 1930; Resp. Ex. 983-A as a typewritten copy of the worksheet
25495 Alpha used in compiling its bid for the State of Illinois Highway Department in 1929. Resp. Ex. 983 A and B was used by Alpha in connection with this tabulation. Alpha used Resp. Ex. 982 A and B in its 1930 bid, the year following this. On the right hand side of Resp. Ex. 982 A and B there are two lists of figures in pencil which have been pasted over the face of the main exhibit. It is quite a job typing all of those, and Alpha used to type up as many copies as a machine would write. Alpha had some left over from the 1929 worksheet and Alpha used it in the 1930, and pasted this over this copy to put its prices, mill nets, in here for the 1930 bid, in-
25496 stead of typing out another sheet. That is, all of the columns to the left of the pasted-on portion were still applicable, whereas in 1930 Alpha's prices having changed, it had to use a different list.

Examination on Voir Dire by Mr. Wooden.

Q. Mr. Fellows, do you fill out the abbreviations that run across the top of both of these exhibits when necessary?

A. Well, this is the first column here (indicating) is Alpha, the next is LaSalle, the next Buffington, the next is Hannibal, the next is Limedale, the next Mitchell, and underneath here you find Birmingham.

Q. And the same abbreviations cover the Respondents' Exhibit 983?

A. It is the same thing, because one is just a copy of the other.

Q. Are those freight rates under each of those abbreviations?

25497 A. Yes, sir.

Q. Covering those points—

A. From those points to the destination.

Q. To the destination shown on the lefthand column?

A. Yes, sir.

Q. And the only mills of the Alpha Company were Alpha and LaSalle among those listed?

A. Yes, sir; those are the only two mills serving that territory.

Q. Were all the headline points designated by abbreviations, were they all basing points?

A. Let me see that again, please.

(Counsel hands exhibit to witness.)

A. Yes, sir; I believe that was the case at that time.

Mr. Wooden: The only objection, Your Honor, is that this again is a repetition and accumulation of the same part of evidence that we put in in support of the complaint. I haven't any objection to it other than that, and hardly any then unless it is just a prologue to another long building up of the same sort of thing that we had last week.

Trial Examiner Norwood: This relates to the sale of another territory.

Mr. Wooden: Yes, but—

Trial Examiner Norwood: To that that was cov-
25498 ered last week, was it not, Mr. Leisure?

Mr. Leisure: I beg your pardon?

Trial Examiner Norwood: This relates to the sales methods in another territory?

Mr. Leisure: Yes, sir; this is a totally separate transaction. The ones we put in last week, Your Honor, had to do with Government bids; this has to do with State highway bids in the State of Illinois. There is no connection whatever between the two transactions.

Mr. Wooden: The only connection is that the same method was used.

Mr. Leisure: Oh, yes, the cement was sold, too.

Mr. Wooden: Yes.

Mr. Leisure: To that extent they are similar, but in no other way.

Trial Examiner Norwood: Well, what difference in the method? What is the difference in the method,—simply that they did not use those pink office cards, and the small dealer cards? Was the figuring of the price done in the same way as shown last week?

Mr. Leisure: Well, I was going to have the witness tell us about that; in some instances they may have been similar, yes.

Trial Examiner Norwood: Yes.

Mr. Leisure: They may have arrived at their des-
25499 tination prices in a similar manner in certain instances.

Mr. MacIntyre: Your Honor please—

Mr. Porter: And in certain cases they did not. This witness will testify to a considerable variety in procedure—cannot just pick out one thing to show variety.

Trial Examiner Norwood: You mean procedure in figuring out this price?

Mr. Porter: That is considerable variety.

Trial Examiner Norwood: From known basing points and known freights?

Mr. Porter: Not in every case, Your Honor, with this witness; we are going to show various exceptions.

Mr. MacIntyre: Your Honor please—

Trial Examiner Norwood: Well, going into this, if you have a new method to show, or anything new, as to the way of figuring net prices on which you can base your contention that there is no collusion or agreement, we will receive it, but when it gets cumulative, I think that we should reject it.

25500 (RESP. EXS. 982-A, 982-B, 983-A, and 983-B were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Fellows, I notice that Mr. Wooden asked you about freight rates on these exhibits (referring to
25501 Respondents' Exhibits 982-A and B, and 983-A and B); where did these freight rates come from on there? Where did you get them?

A. These freight rates that are shown on these sheets were put on by the sales department from cards which they had in their sales files. After these were all put on this sheet they were turned over to our traffic department for checking. You will note in practically all of these the little dot along there which indicates the traffic department has checked them.

By Mr. Leisure:

Q. Yes.

A. Re-checked them with the railroad tariffs.

Q. Those are the freight rates that you explained to Mr. Wooden?

A. Yes, sir.

25502 Q. And it is the same copy, same column, that you are referring to?

A. Yes, sir.

Q. I notice that there is some writing in red down at the bottom of both pages, Respondents' Exhibits 982-A and B (indicating); do you know what those figures represent, Mr. Fellows?

A. Well, now, the one on the—what is this number—982-A, reads: "Rates O. K.," and the initials of Howard Whitmore, traffic department, and it is dated there 3-14-29.

Over on this side, over on the next one, B, is the same thing dated 12-23-29.

Q. What is it, Mr. Fellows?

A. It is his O. K. on the rates. He is the traffic man that O. K.'d the rates which applied on there,—whatever corrections were necessary, if any.

Q. Thank you.

Mr. Fellows, you said that this work was done under your supervision. Will you just explain to us for the record how you determined the prices which you submitted on this March, 1929, letting to the Illinois Highway Department (handing Respondents' Exhibit 982-A and B to witness)?

A. Well, this sheet was made up so that we would have just a picture of these destination points rather than all the other destination points in the State of Illinois, and we used the rates that were shown here, and I think

25503 without going over it in detail that we used the lowest combination of base plus freight in arriving at the destinations shown on here.

Q. You are now referring, are you not, to March, 1929?

A. Yes, sir.

Q. And did that deal with your commercial prices?

A. They were our commercial prices at that time.

The witness identified Resp. Ex. 984 as a letter from the St. Louis office to him at Chicago stating that the St. Louis office had checked the worksheet for the March 22, 1929 letting, and found it O. K. There was nothing unusual about it because Alpha ships into the State of Illinois from its mill at St. Louis or Alpha, Mo., or LaSalle, Illinois. The state is divided in the sales effort between those two dis-

trict offices which were interested in shipments in the Southern part of Illinois, and the LaSalle or Chicago office was interested in the shipments in the northern part of Illinois.

25504 (RESP. EX. 984, was offered and received in evidence.)

The witness identified Resp. Ex. 985 A to M as Alpha's office copy of a proposal that it submitted to the State Highway Department in Illinois on March 22, 1929.

Mr. Wooden: Your Honor, I object on the ground
25505 it is unduly cumulative. The original bids including Alpha in my best judgment were produced at the time the exhibit consisting of the abstract was offered, and they were submitted for checking against that abstract, and now they come along and offer the original bid or office copy of the bid, rather. It is just unduly cumulative. We might do the same thing for every other bid and we wouldn't be anywhere nearer or closer to the facts than we are now.

Trial Examiner Norwood: You have no objection to it on the ground of this being a copy?

Mr. Wooden: No.

Trial Examiner Norwood: And the original bid is not in evidence?

Mr. Paulson: No, Your Honor.

Mr. Wooden: I think not.

Mr. Paulson: What in the world could this add to the proof? The Commission proved that they did bid and proved the prices that they bid by putting in the abstract, and they illustrated the manner of the bidding; that is, the provisions in the bid, by putting in a sample of one of the proposals, so that there is already in evidence a complete picture of the nature of the proposal and specifications issued by the Illinois Highway Department. The figures of the bids are in in the form of the worksheets.
25506 There is nothing that this new offer could add to the picture that is not in the record, not a thing.

Mr. Werle: Your Honor, these proposals, however, of this Illinois State Highway Division change from time to time, the things that the State is asking for.

Mr. Wooden: What difference does that make?

Mr. Werle: And it has a direct bearing on, naturally,

the action taken by the Respondent in response to this proposal.

Trial Examiner Norwood: We have been over this before. I feel sure that the Respondent has a right to put this in. He is showing the method. The abstract shows maybe the essential features of this bid, but I can't say that the bid itself connected with the work sheets and the testimony here of this witness won't throw more light on the method by which the prices were worked out.

Mr. Wooden: It shows exactly what the abstract shows, and it shows exactly what the work sheets of other companies show in bidding on that particular business. It is wholly cumulative and absolutely adds nothing to the facts.

25507 Mr. Wooden: Your Honor, I would like to say this: That when the method of offering official abstracts coupled with the submission of the original bids for checking against those abstracts was adopted, it is my position that that method was adopted, you might say, with the consent of Respondents' Counsel in order that we might thereby avoid the necessity of putting in large bulky exhibits consisting of the original bids. And now if this one pending offer can be taken as a precedent, then every bidder has a right to abandon the arrangement by which abstracts subject to check against the originals were put in, and to insist upon putting in those office copies of those original bids. And all to what end? Nothing but cumulative showing.

I will have no objection at all if it shows anything different from what has already been shown.

25508 Trial Examiner Norwood: Well, I have already stated, that I think you have a right to put in the
25509 whole bid, if there is any material part that is not already covered by the information in the abstracts and the testimony of the witnesses, and so on, and in any view of the case you could put in one of them or two of them to tie up the bid with your method of figuring.

I don't think that we should be meticulous about that, so far as putting in a bid or two, even if there is some doubt about whether it adds something to it or not. That is putting them in for the purpose of showing the method.

I shall overrule the objection and receive these. We have gone into this subject two or three times and there is no use of our arguing it any further.

(RESP. EX. 983-A to 985-M was offered and received in evidence.)

The witness identified Resp. Ex. 986-A and B as a
25510 letter written to him as sales manager of the Chicago
office. It was a report on the letting of March 22,
1929 from the Illinois Highway Department and signed by
C. R. Smith, district sales manager of Alpha.

(RESP. EX. 986-A and 986-B was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Fellows, do you recall now whether your
25511 company obtained the award on this letting?

A. I think we got some award, I don't remember definitely, but I am quite sure that we did, because at that time we were receiving awards from the State.

Q. Now, Mr. Fellows, in arriving at your bid price with respect to this letting represented by Commission's exhibits which I have already referred to, did you have any contact or communication with any of your competitors in any way which in any wise influenced your price or your action?

A. No, sir; none whatever.

Q. I would like to call your attention to another Commission's exhibit bearing date of March 26, 1931, and Commission's Exhibit No. 1191-A to H, inclusive (indicating). It is an abstract of an Illinois State Highway bid, dated June 3, 1930, and it indicates that the Alpha Company bid on that letting.

Will you tell me whether or not that is correct?

A. (Examining document). This is dated March 26, 1931. This is the abstract.

Q. The abstract of the bid appears as Commission's Exhibit 1191-D, does it not?

A. Well, that appears to be an abstract of the Illinois bids of January 3, 1930.

Q. That is the one I am asking you about.

Mr. MacIntyre: What is the number of that?

25512 Mr. Leisure: Commission's Exhibit 1191-D.

By Mr. Leisure:

Q. Did Respondents' Exhibit 982 have any connection with that Commission's exhibit, and, if so, what?

A. Respondents' Exhibit 982-A, as well as B, show the same prices that we quoted as are shown on this abstract.

Q. There are some red figures here also, Mr. Fellows—

or, rather, they are in black. I notice in Respondents' Exhibit 982 there are certain figures at the top of the column under "1929." Can you explain that?

A. This exhibit, Respondents' Exhibit 982-A and B, rather, is the work sheet that we used for the bid in 1930. It was also used for the bid of 1929, that is, 1930, using the same sheet we pasted this sheet over it to put our prices, our new prices, on the pasted-over sheet.

Q. Are you now referring to Commission's Exhibit 1191, Mr. Fellows?

A. As far as the prices shown on it for Alpha.

Q. Yes.

A. And the prices that we show on our work sheet.

Q. That is, your work sheet that you used in connection with that letting as shown by Commission's Exhibit 1191?

A. Yes, that is the work sheet that we used in this letting, yes.

Q. Thank you.

25513 Do you recall now, or can you refresh your recollection from those papers that you have before you, referring to the Commission's exhibits, whether or not you used the same or different bases in 1929, in 1930—

A. Well, I can't tell that—

Q. In figuring your bid?

A. —from the Commission's exhibit; I can tell that from the Respondents' exhibit.

Q. Will you tell us?

A. We used different bases, lower bases in 1930 than we did in 1929.

25514 Q. I notice on this Commission's Exhibit 1899-B written at the top of the page under the heading "Alpha" an indication of mill net, $1.70.

Is there anything in your bid represented by Respondents' Exhibit 985 which gives any such figure as that?

A. No, sir.

Q. Is there anything on your work sheet which gives any such figure as that?

A. There are points or destinations here that gives us a mill net of $1.70—

Q. Yes, but that is not my question. You will observe that the heading of this entire Alpha list here for all of these destinations, that there is a mill net marked of $1.70.

A. No, sir.

Q. Is there any such figure either in your bid or in your work sheet for those points?

25515 A. No, sir. No, sir. No, sir. There are points that give us $1.70,—

Q. I understood, but that was not my question.

Do you know in whose handwriting that mill net on there is written in?

A. No, sir.

Q. On the Commission's exhibits?

A. No, sir.

Q. I show you Respondents' Exhibit 987-A to N, inclusive, for identification, and ask you if you can tell us what it is.

A. This is our office copy of the bid we submitted to the Illinois Highway Department in 1930—for 1930.

Mr. Leisure: I offer it in evidence.

Mr. Wooden: I make the same objection, Your Honor, that it is unduly cumulative, as showing nothing different as to method than has been shown before, and it is a violation of the implied understanding that if the original bids were submitted for checking against abstracts, that it would be unnecessary to put the bids in.

Mr. Leisure: Well, now, I don't know whether Mr. Wooden is really serious when he makes that statement or not. If he is serious, I feel that I ought to answer it. I think nothing could have been clearer when he was putting in his case than that we would check the abstracts; and if he wanted to he could put in his abstract, but

25516 certainly we were not limited by allowing him to put in what he wanted, and when he got finished and got everything that he wanted in the record, I don't believe anyone could argue seriously that that should in any way bind us so that when it came to our case we couldn't put in what we wanted on this same transaction. I can't conceive of that being argued seriously by anyone.

Mr. Wooden: Well, I say that there was from the course of conduct and all the circumstances an implied understanding that if the original bids were produced for checking against the abstracts it would not be necessary to put in those original bids.

Mr. Leisure: That was Mr. Wooden's position as to what he wouldn't have to do to get what he wanted. There

was no implied understanding as to what we should do when we got to our case, and I think anyone reading the record will agree that he had some difficulty in getting the abstracts in evidence.

Trial Examiner Norwood: Yes.

Mr. Leisure: And he had to come to us in order to get the abstracts in, and we said that subject to checking we would have no objection to the abstracts going in, and there the matter stopped, and I can't conceive of how anyone could imagine that it could go any further.

25517 Trial Examiner Norwood: The objection is overruled and the exhibit is received as marked, Resp. 987-A to N.

The witness identified Resp. Ex. 988-A and B as a copy of Alpha's work sheet used in reference to the let-
25518 ting of February 5, 1931 to the State of Illinois Highway Department; Resp. Ex. 989 as a letter written by him to Mr. E. J. Moore, district sales manager in Alpha's St. Louis, Mo. office, in connection with this letting of February 5. A conference with Mr. Moore took place with reference to this letting.

25519 (RESP. EXS. 988-A, 988-B, and 989 were offered and received in evidence.)

25520 The witness identified Resp. Ex. 994 as Alpha's office copy of the bid it submitted to the State Highway Department of Illinois for February 5, 1931; Resp. Ex. 990-A and B as a salesman's report of that letting the salesman mailed in to the Chicago office; Resp. Ex. 991 as a compilation relating to the lower quoted bids that were made at that letting in an effort to find out what the bids meant; Resp. Ex. 992 as a letter he wrote to the State of Illinois, Department of Public Works and Buildings—"Department of Public Works and Buildings" is the official title of the State Highway Department, "Division of Highways"—attention of Mr. Cleveland, who was the commissioner at that time under date of February 10, 1931; Resp. Ex. 993-A and B as a copy of a letter dated February 5, 1931 which he wrote to Mr. Coogan re-
25521 porting on this letting of February 5th. With reference to Resp. Ex. 991, as witness recalls it, the bids were lower prices made on this letting than Alpha had quoted. Alpha was trying to find out what was quoted and what it reverted back to, what the price was, the lowest combination of base plus freight to see if it could find

some figure at some producing point. This was not used in connection with this particular letting, February 5th, because this was made up after the receipt of the information covering this letter. Alpha might have used the information on subsequent letting. That he does not recall nor does he know from looking at this [exhibit].

Mr. Leisure: I offer these in evidence.

Mr. MacIntyre: To what Commission's exhibit do they relate, if any, Mr. Leisure?

Mr. Werle: These do not relate to any Commission's exhibit on this letting at this date. The Commission put in no Illinois bid for the year 1931. They did put in Illinois bids for the years 1929, 1930, 1932, and so on.

25524 Mr. MacIntyre: This method by this Respondent was the same as the others and Mr. Werle has just stated that it was. They found, however, in '31 that by not departing from the basing-point system and by someone else having departed from it on this particular set of bids, that they at the next letting probably also departed to a slight degree from it themselves; that is, the Alpha Company. So why should they show it? The record is full of some of the departures. It is just a question as to whether or not it has become necessary for the Respondents to put in evidence of every price that they quoted from the time that the cement industry began, in 1890 or 1902, referring back to Mr. Coogan's testimony, and coming right down to date. If they are to put in every price, of course, it has a bearing and some relation

25525 to the pricing in cement, but it becomes a question as to whether it is cumulative, and whether or not it has any materiality or adds anything to the facts now in the record.

Trial Examiner Norwood: But they have alleged a development here, the development of a method here, and the question is, should they be permitted to show that development.

Mr. MacIntyre: The evidence in the record also shows the development, and they admit it. We concede it.

Trial Examiner Norwood: I know. I don't know whether they think you show it as well as he wants it to be shown.

25527 Mr. Paulson: Yes, we object that we haven't any opportunity to cross-examine with regard to the collusion in contracts which are at issue in this case. We

are receiving the ratings of the Respondents without having the opportunity to cross-examine.

Mr. Werle: Your Honor, what difference does it make?

Mr. Paulson: We have made that objection consistently throughout, and I want to renew it.

Mr. Werle: Your Honor, is the objection that we are delaying this case, or is the objection that the documents are showing things that they want to cross-examine about?

Trial Examiner Norwood: They are unduly cumulative, I think is the objection.

Mr. Wooden: Both.

Trial Examiner Norwood: I shall overrule the objection and receive the documents as marked.

(RESP. EXS. 990-A, 990-B, 991, 992-A, 992-B, 992-C, 993-A, 993-B, and 994-A to 994-R, inclusive, were offered and received in evidence.)

25528 By Mr. Leisure:

Q. Mr. Fellows, in whose handwriting is Respondents' Exhibit 91, if you know?

A. The righthand column is in my handwriting. The balance of the exhibit is in the handwriting of Mr. Paul B. Cornwall. I notice on the bottom here, the last line is also in my handwriting.

Q. And I understood you to say that the entire exhibit was made up under your direction?

A. Yes, sir.

Q. I notice in Respondents' Exhibit 988 there are certain red and green figures and writing on the bottom; what are they, do you know?

A. Yes, sir.

Q. Will you explain those, please?

A. We submitted two bids to the Illinois State Highway Department at this letting, one for shipment
25529 from our St. Louis plant, and one for shipment from the LaSalle plant, and in this work sheet we indicated as to what points we would bid on from LaSalle for shipments from LaSalle, and which points we would bid on for shipment from St. Louis, and the points marked with red are not included in the LaSalle bid. The points marked in green are not included in the St. Louis bid.

There are some points that have no mark on at all, and that indicates that we bid at that destination in both bids, both for shipment from LaSalle or St. Louis.

Q. Now, beside the County Alexandria, there is a red line, I notice. What does that indicate, if you know?

A. That indicates that we did not bid for the County of Alexandria. In the bid we submitted for shipment from the LaSalle Mill. In other words, Alexandria was way down in the lower part of Illinois, and the natural shipment would come from the St. Louis mill, and Alexandria was included in the St. Louis bid.

Q. Then, Mr. Fellows, would that be true or would it not be true of all of those red and green lines that you have drawn all the way down the lefthand side of that page?

A. Yes, that's shown very distinctly on the exhibit and is written out and indicated—

Q. May I just take that a second.

(Witness hands document to Counsel.)

Q. Now, where you have the different basing 25530 points you have entered here two figures, for example, I notice at Alpha you have above the word "Alpha" the figure 1.60, and below the word "Alpha" you have 1.65, and then below the 1.65 the figure 1.60 again; and then at LaSalle, above the word, you have, I notice, the figure 1.61, and immediately below that 1.66, and below that 1.51.

Can you explain, and can you tell us what the significance of those basing-point figures is, and how they affected your bid, if they did, and, if they did, will you tell us how?

A. (Examines document.) There were three rows of figures here, and the middle row is just five cents higher all the way across here than the upper row.

It is my recollection that at this time we were quoting our commercial business using a five-cent trade discount or dealer discount?

Mr. Porter: Dealer service payment.

The Witness: Dealer service payment, and we did not quote to the State including that five-cent dealer service payment, so that we changed the base prices up above here, the bases, just the five cents, so the one in the middle is 1.65 under "Alpha," and above it 1.60, and it is the figures up above that I believe we used in this bid.

I can find out by figuring it, and I think the lower row of figures was used in some subsequent bid.

25531 By Mr. Leisure:

Q. Do you have reference to the February 5, 1931—

A. Yes, sir.

Q. Well, what was the purpose of putting those figures on there, then, on this work sheet,—these basing-point figures that have no relation to a particular bid?

A. Well, they were put on there, including the dealer's service payment, and then when it came to figure this bid, why, we didn't include that in quoting on the State. In other words, we took that off before bidding, and these prices that are quoted here, worked out here, are based on the figures above with the dealer's service payment left off.

In other words, we took that off before we quoted to the State.

Q. Which row of figures are you talking about at the moment, Mr. Fellows?

A. As having been used in computing these prices?

Q. Yes.

A. The upper row.

Q. And as to the third row, are you discussing that?

A. No. I am excepting that, I don't believe they were used in this bid. If you want me to take it, and work it up in a few minutes I can work it out.

Q. No, thank you.

Now, take, for instance, one of these counties—let
25532 me call your attention to Adams, where you show a delivered price of 2.23. Can you tell me how you reached that price (handing document to witness)?

A. Adams County was using the base at Hannibal of 1.66, plus the 7 cents—rather, of 27 cents, plus 40 for sacks, makes 2.33 per barrel, which we quoted in this bid.

By Mr. Leisure:

25533 Q. Now, then, come on down to the County of Boone; do you find it there?

A. Yes, sir.

Q. You have written there a delivered price of 2.27.

A. Yes, sir.

Q. While, just on a line to the left—do you find it—and to the right, is entered 2.17 B—2.17 B—what does that mean?

A. Well, those were put on there after the letting, and

was evidently what was quoted at that letting by someone, I don't recall, wouldn't know now without seeing the abstract as to who quoted 2.17. We figured that was on Buffington. Underneath that was "LD" for Limedale, and 2.20 for LaSalle.

Q. Can you tell us what those initials mean, the "LD," and so on?

A. Limedale.

Q. Limedale.

Trial Examiner Norwood: What base did you figure that on?

The Witness: On these prices?

Trial Examiner Norwood: That 2.27.

The Witness: For Boone?

Trial Examiner Norwood: Yes.

(The witness figures on paper.)

The Witness: Boone was figured on Buffington base of
1.51, and a freight rate of 9½ cents there per hun-
25534 dredweight, or 36 cents per barrel, resulting in
2.27.

By Mr. Leisure:

Q. Now, you told us, Mr. Fellows, that there were some points at which you did not bid at your LaSalle mill, and you did bid at your St. Louis mill, and vice versa.

Are there any points from which you bid for shipment from both these mills?

A. Yes, sir.

Q. I have here Respondents' Exhibit 992, being a letter of February 10 to the division of highways, in which you are sending them lower prices for certain destinations. Can you tell us what the circumstances were under which you wrote that letter and quoted those lower prices (handing document to witness)?

A. Well, after this letting we found lower quoted prices out in the field, and in order to meet the competition that we found we sent out quotations quoting those lower prices, and we sent this letter to the State Highway Department of Illinois, feeling that it was in conformance with a provision or paragraph in their proposal obligating us to give them the advantage of any lower quoted prices while that contract was in effect, and while the lower quoted prices were in effect; and in conformance with that paragraph we felt it necessary to send out this letter covering these points. Now, this—

Q. Did you change your commercial prices in any way?

A. Yes, sir. As a matter of fact, I think we
25535 changed our commercial prices either the day of this letter, or a day or so before.

Q. You have told us about lowering your prices, and your reasons for doing it. Does that appear in your proposal, Respondents' Exhibit 994 (indicating)?

A. (Examines document, Exhibit 994).

Q. Let me call your attention to paragraph 6, Mr. Fellows, to save time.

A. Yes, paragraph 6.

"The successful bidder agrees that if during the life of this contract, he shall sell his cement f.o.b. any point of delivery covered by his contract at a price lower than that described therein for such delivery point, such lower price will apply on shipments made on such contract to such point of delivery during the time such reduction is in effect."

That is the paragraph that we felt—under which we felt obligated to give the State the advantage of these lower quoted prices.

Q. Do you recall whether any award was made?

A. My recollection is that no award was made.

Q. And also, do you know whether all bids were rejected?

A. I think the bids were all rejected.

Trial Examiner Norwood: Why were they rejected, do you know?

25536 The Witness: No, sir.

25537 The witness identified Resp. Ex. 996 A and B as an original worksheet covering a letting of the Illinois Highway Department of March 5, 1931. His company bid on that letting and this is a worksheet from which he made up his bid.

25542. Mr. Leisure: I guess we never got anywhere on that, but it still sounds to me like a good method to save time, to allow us to meet the Government's case fully with respect to one Respondent and then to see if we can't save time with other Respondents. If we attempted to try to do that before we have adduced the testimony with respect to one Respondent, there would be a great argument as to what we could prove, but if we say we want to prove what is on the record already with respect
25543 to this Respondent, it seems to me that forms a

basis of trying to get together. I don't know that we will be able to, but where you have a case that has taken up so much time, and you have so many Respondents, it seems to me a reasonable approach to this problem. It is a problem, and we have got to approach it some way.

Mr. Paulson: Mr. Leisure is starting to face this problem too far along the line of where the problem should be faced. Mr. Leisure is proving again what the Commission proved. Now, that is where the problem should be faced, away back there, not as to the next company.

25546 The witness identified Resp. Ex. 996 A and B as a work sheet covering bids Alpha submitted. After this [work sheet] was all worked up, it was sent in for him to determine which points were bid on here and there and to check these prices. It was done under his instructions from file checking, and so forth. The witness identified Resp. Ex. 997 as Alpha's bid.

25548 Trial Examiner Norwood: In regard to Respondents' Exhibits 996-A and B, and 997-A to R, inclusive, the objections are overruled, and they are received in evidence, but I want to clarify the situation with regard to these, and as to all other work sheets that have gone in heretofore.

Where the correctness of the figures in factual statements have not been sworn to by the person who made them, these exhibits are not received to prove those factual matters but are received as heretofore indicated, to illustrate the method employed in arriving at these prices. Let that apply to all the similar exhibits.

25549 The witness identified Resp. Ex. 998 as a telegram from H. H. Cleveland, Director of Highways, State of Illinois, to the Chicago office, with regard

25550 to Resp. Ex. 996 A and B.

Q. I notice in connection with this list of basing points in this exhibit, Mr. Fellows, there are also penciled figures entered above and below the names of the basing points and those penciled figures are then stricken out in some instances.

Can you tell from the examination of this exhibit how you computed your delivered prices with respect to this bid?

A. The lower or the typewritten figures, I think, appeared on an earlier work sheet of some letting, and that when we got this notice of—or this proposal for this

letting, we simply gave a copy of a previous work sheet to the stenographer and asked her to make a copy of it, and, in making that copy, she included those figures, put in the figures in type that were on the previous exhibit—or the previous work sheet. Now, the figures up above, I believe, were the figures that were used in compiling this work sheet and were subsequently scratched off for a following proposal or letting.

Q. Do you know whether the previous work sheet you referred to was 998-A and B, or not?

A. Yes, sir; it appears to have been taken from this copy and typed in on this one (indicating).

Q. On the lefthand side of this Respondents' Exhibit 996-A, there are penciled columns, one the LaSalle and the other St. Louis with figures entered. (Indicating.) Can you tell what those are? Can you explain what
25551 those are?

A. Those figures in there are in the handwriting of Mr. Smith, district sales manager in the Chicago office, and were put on there after the bids had been received at Springfield, and indicate the mill net that would be received at LaSalle in this lefthand column, and St. Louis in this other column (indicating).

Q. Now, on the righthand side, in the second and third columns from the right, there are certain figures with circles drawn around them (indicating); what does that mean?

A. That indicates the points at which we bid, this is blue from St. Louis—for shipment from St. Louis; and red over in this other column for shipment from LaSalle (indicating).

Q. Now, I notice on the last column there seem to be two rows of figures, one in red and the other in blue (indicating). What are they?

A. I think those are the prices, delivered prices, quoted by someone at this letting, that indicates that they were lower prices than we had quoted.

25552 (RESP. EX. 998 was offered and received in evidence.)

By Mr. Leisure:

Q. Did you want to explain something about Respondents' Exhibit 996, Mr. Fellows?

A. I misspoke myself in regard to these blue and red marks.

25553 Q. Will you explain that?

Trial Examiner Norwood: Yes.

A. It states very definitely down at the bottom of this exhibit that the red indicates that they were not included in the LaSalle bid; whereas, I think I testified that they were included in the LaSalle bid, which is just the reverse.

By Mr. Leisure:

Q. No correction as to the blue markings?

A. The blue is not included in the St. Louis bid.

Q. All right.

The witness identified Resp. Ex. 999 A and B as a work-sheet that Alpha used to compute its prices for the letting of March 26, 1931, of the State Highway Department of Illinois; Resp. Ex. 1000 as a proposal that he submitted on that bid.

Examination on Voir Dire by Mr. Wooden.

25554 Q. Did you explain, Mr. Fellows, what the pencil X's after certain figures are, down in this column headed "Limedale," is it?

A. No, sir; I can't explain what those X's are except they may have some—

Mr. Paulson (Interposing): We don't want his guess, if he doesn't know.

Trial Examiner Norwood: Yes, tell us what they are, if you know.

Mr. Leisure: He is trying to tell us what he knows about it.

Mr. Paulson: He said he did not know.

Trial Examiner Norwood: He is speculating on it.

Mr. Paulson: He said he did not know.

Trial Examiner Norwood: If you have any definite impression that would mean something, you may give it.

The Witness: I don't know, right offhand now, what the X's are.

By Mr. Wooden:

Q. Could you explain what the red check indicate in the same column?

A. I see only one red check.

Q. Here (indicating).

A. I don't know what they are; I don't know what those two check marks are.

25555 Q. Could you explain what the figures encircled in red pencil are?

A. The circles in red pencil indicate the lowest combination of base plus freight.

Q. Would you explain what the blue-penciled figures in the column are? There are only three of them, I guess.

A. That is a correction of the figures appearing in these other two columns.

Mr. Wooden: We make the same objection as made to preceding exhibits. They are of the same character, Your Honor. It shows no different method of quoting or of bidding than has been regularly well established.

Mr. Paulson: I want to add to that, Your Honor, that we just had an example of what was pointed out this morning, that this witness didn't make these work sheets up, and he wasn't even familiar with some of the marks on there. In other words, they are made up by several different men in this industry.

Trial Examiner Norwood: Well, he testified that they were made up under his supervision.

Mr. Paulson: It isn't helping to get the record clear or the issues in this case settled at all to have documents put into evidence about which we don't know everything. We don't know but what those X's might mean that they were sent to the Lehigh Company and Lehigh put the
25556 X's on there. We don't know what they might mean. They are on there and they are a part of the exhibit. We can't tell what they mean.

Trial Examiner Norwood: The objection is overruled and the exhibits are received subject to the limitations heretofore stated.

(RESP. EXS. 999-A, 999-B, 1000-A to 1000-R were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Fellows, I notice in this work sheet at the top, Respondents' Exhibit 999, the words "Price Less 10 cents cash net after all discount is deducted." Do you see that?

A. Yes, sir.

Q. What does it mean?

A. It means that these nets appearing over here on the righthand side are after the cash discount has been deducted. In other words, it is a stripped net price.

25557 Q. Now, I notice at the top of the sheet under your list of shipping points there are no figures en-

tered under the heading "Alpha" or under the heading "Linwood" or "Marquette." What does that mean?

A. Well, it means that in computing—in computing the delivered price based on the lowest freight rate on the base, that those—there were no bases used at those three points.

Q. Now, over there on the righthand side there are penciled figures appearing in that column. What do they indicate?

A. Well, under the column "Delivered Price" for the first destination at Adams County appears $1.87. That $1.87 results from using this freight rate of 7 cents from Hannibal to Quincy, the county seat of Adams County, plus the Hannibal base of $1.20. That results in $1.87.

Now, under the LaSalle mill net, that gave LaSalle 90 cents, including a discount. The next column is the mill net after the discount has been deducted, or the stripped mill net. Now, in this particular bid we observed a minimum of $1, or 90 cents stripped at LaSalle. That only gave—the $1.87 at this point only gave 89 cents. Now, the next column showed that we raised our delivered price at Quincy 1 cent in order to observe the minimum of 90 cents stripped at the mill. So the price that we bid to the State at Adams, in Adams County, Quincy county seat, was $1.88, which was not in accordance with the lowest base plus freight combination.

25558 Q. Now, take the fourth line there. You have under the heading "Brown County"—do you find it?

A. Yes, sir.

Q. Under that heading "Delivered Prices" you see there in that column is 1.92.

A. Yes, sir.

Q. And then there is under that, marked in ink, $1.92. Do you see it?

A. Yes, sir.

Q. And on the right there is 96 opposite that.

A. Yes, sir.

Q. What do those figures mean?

A. That indicates that when this was made up, the party figuring the LaSalle mill net, including discount, figured 96 cents. The correct computation should be $1.06, including the discount. It was then checked and the error was found which indicated that it netted us with the discount off 96 cents, which was above the minimum

which we were observing. Consequently, the price we ultimately quoted was $1.92, the same as shown over in the first column here, the first penciled figure column, using the base of $1.20 Hannibal plus 8½ cents freight.

Q. Now, under the heading there "Clay County," do you find that?

A. Yes.

Q. —there are—I notice you have the figure
25559 "90" in the extreme righthand margin in blue pencil. What does that mean?

A. Under the delivered price column is shown a destination price of $1.82. The $1.82 is made up by using $1.02 Limedale plus a 10½-cent freight rate from Limedale, resulting in $1.82. That less the LaSalle freight netted LaSalle 83 cents stripped. That was less than the 90 cents stripped which we had determined upon using in this bid. So we raised our price of $1.82, 7 cents. The net on the other compufation being 7 cents lower than the minimum we were going to observe, so we raised our ultimately quoted price 7 cents and quoted $1.89.

Q. Now, several times in explaining this exhibit, Mr. Fellows, you have said we did this or we did that. From what source did you obtain the information appearing on this tabulation?

A. Well, the freight rates appearing on here were all checked over by the traffic department, originally put on there by the sales department from the freight rates they had in their files, checked by the traffic department, and the resulting compilations worked out.

25560 The witness identified Resp. Ex. 1001 A, B and C as an abstract of bids received by Alpha at this letting of March 26th. It was made up in Alpha's Chicago office and a copy of it sent to Easton to give them the information as to what had taken place at this letting and what prices had been quoted.

Q. And was the same practice followed, or any different practice, from the other work sheets? Did you have that done for your information?

A. A good many times we received a tabulation from the State of Illinois, and sent that out to Easton. I don't know whether we got an abstract from the State of Illinois this time or not; I don't know whether we had this tabulation from the State of Illinois this time or not.

Q. Then in answer to my question as to whether you

obtained the information appearing on the tabulations, your answer is what?

A. Well, you asked me where we obtained the information appearing on this work sheet.

Q. Yes, I am asking you another question now.

A. Pardon me.

We got this information from being present at the letting, and also from the State Highway Depart-
25561 ment of Illinois.

Mr. Leisure: I offer this in evidence (handing to Mr. Wooden Respondents' Exhibits, for identification, 1001-A, B, and C.

Mr. Wooden: The same objection, as to the cumulative character.

Mr. Paulson: Your Honor, we don't have to have every single bit of work that this company has ever done illustrated in this record. That is what is happening. The testimony is that they had their salesman, or someone of their agents, go and make an abstract of the bids as they were obtained, and they are not satisfied with that; they want to show by the document that they did that.

If they carry that much further, they will want to illustrate that this man is actually employed by bringing on his employment certificate, or the sheets to show that he had been put on the company rolls, and so on. They might illustrate everything.

That seems to me rather exceeding the bounds of all reason. That does not prove anything, except to illustrate his testimony that they did make abstracts of bids. We know that they did, because we put abstracts of bids in, in the course—

Trial Examiner Norwood (Interposing): What do you want to show by this proffer?

25562 Mr. Werle: They put them in, so we cannot put them in.

Trial Examiner Norwood: What do you want to show by this proffer?

Mr. Leisure: I want to show primarily exactly how we arrived at the prices which we bid, and how we went about it, which I think, when taken with the evidence that we are about to put in later showing how we base subsequent bids on these same figures, will show conclusively that we arrived at this independently, and not by collusive methods.

That is the primary purpose.

Trial Examiner Norwood: You mean that is the ultimate inference.

Mr. Leisure: Sir?

Trial Examiner Norwood: That is the ultimate inference.

Mr. Leisure: Yes.

Trial Examiner Norwood: But what evidentiary fact do you want to establish by that?

Mr. Paulson: Why isn't the testimony sufficient? I do not understand that after all you can illustrate every bit of your testimony with a—

Trial Examiner Norwood (Interposing): You are putting in the abstracts of bids made to the Highway
25563 Department?

Mr. Porter: The Commission put in bids—.

Mr. Leisure: Later I will come to some testimony and some bids that will show how we based our bids. I cannot base it on some other testimony; I have to base it on the actual physical documents that we based it on.

Trial Examiner Norwood: Yes.

Mr. Leisure: And the only way I know to do it is to show what we did in order to base our testimony on it.

Trial Examiner Norwood: Yes.

Mr. Paulson: You can use it to refresh his recollection with, but we don't need it in the record.

Trial Examiner Norwood: The objection is overruled; received and marked.

(RESP. EX. 1001-A, 1001-B, and 1001-C was offered and received in evidence.)

By Mr. Leisure:

25564 The witness identified Resp. Ex. 1002 as a letter from H. H. Cleveland, Director of the Illinois Highway Department, dated September 7th, written to Alpha's Chicago office, in connection with the letting of March 26, 1931; Resp. Ex. 1003 as a letter from the chief clerk, Mr. McCoy, of the Illinois Highway Department, written to the Chicago office, dated September 23, 1931, in connection with shipments made on that letting.

Q. As to that letting that Mr. Wooden is looking at, what, if anything, did you do, Mr. Fellows, with regard to that request?

A. You mean with regard—referring to the letter from McCoy?

Q. Yes.

25565 A. My recollection is that we eventually gave the State a credit for the amount that—

Mr. Wooden (Interposing): There is a stamp on it to that effect, a credit memorandum under the No. 7-28,—the date and the amount.

By Mr. Leisure:

Q. Is that what that refers to?

A. Yes, sir.

(RESP. EXS. 1002 and 1003 were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Fellows, will you explain what the basis was for allowing this claim by the State of Illinois, and this situation?

25566 A. The basis for allowing the claim was that we wanted to make shipments of the cement, we needed the business, and then if we had not allowed the claim in connection with their version of the proposal, or provision of the proposal, why, some of our competitors would have had that allocation instead of ourselves.

By Mr. Leisure:

Q. Was there a provision in the proposal with respect to it?

A. (Witness referring to data). Yes, sir; it comes under paragraph 4.

Q. Don't read it. Just explain the situation so

25567 that it will be clear on the record, will you?

A. In bidding to the State of Illinois we bid the destination price f.o.b. the county seat, as called for in the proposal. There was a provision in the proposal that the cement if needed could be shipped to another destination within that county. If there was any difference in the freight rate over the ultimate destination, at the ultimate destination, higher or lower than the county seat freight rate, that that would be added to or deducted from. The contention that the State was taking in this particular instance was to the effect that the freight rate did not change at the ultimate destination, over the original destination, the county seat, from such and such a mill. Therefore, because our freight rate did change, and we applied this provision that said that we can buy

this cement from so and so and not have to pay anything more for it,—now, if you want to meet that provision, that applies to your competitor you can have the order; if you don't want to meet it, then we will have to give the allocation to them.

So, in order to make the shipment, we had to absorb that much more and meet that competition.

25568 Trial Examiner Norwood: Well, how does this come in this picture at all? How is this relevant?

Mr. Leisure: The Commission went into these bids in Illinois, and we are following up, showing why we bid the way we did. They put them in on the theory that we bid collusively. This very group of exhibits, and the witness' explanation, shows we were forced to bid the way we did by the State, not by competitors, but by the State itself.

Mr. Paulson: The Commission put them in to show the application of the basing-point system by numerous members of the same industry ends in identical prices to the public.

25569 Trial Examiner Norwood: You are going off here on a tangent showing some adjustment he made according to the contract certain freights which the State should not have had to pay if it had ordered from another company. I do not—

Mr. Werle: The state is requiring this company to meet the lowest destination cost they can get at that point. That is exactly what they are trying to do, and this company had to do it.

Trial Examiner Norwood: Has anybody, or any evidence, ever disputed that proposition?

Mr. Leisure: Yes, the inference is to be drawn from the evidence that is in the record.

Trial Examiner Norwood. I don't see why you have to go out of your way to prove something like that.

Mr. Wooden: Your Honor, to be disputing that we would have to be disputing the terms of the States' invitations and the contract, and we do not dream of disputing it.

Trial Examiner Norwood: There is so much in the record about this, and nothing to the contrary.

25570 By Mr. Leisure:

Q. Now, in connection with these bids as to the State of Illinois that we have been discussing: One of

them we have discussed before lunch, and we have discussed two of them since, the 1931 bids. Did you quote, and if so, to what extent did you quote your commercial prices that you were quoting to your dealers' trade at these destinations?

A. We quoted our commercial prices to the State in the first two bids. In the third bid we quoted our commercial prices with the exception of those points at which we observed the minimum.

Q. Now, again, as to all three of those bids of 1931, did you have any contact with your competitors in any way with respect to what bids you were to make?

A. No, sir.

Q. Or what prices you would quote?

A. No, sir.

Q. I have in my hand, Mr. Fellows, an exhibit put in evidence by the Commission, No. 1884, being a highway department tabulation of the State of Illinois, dated as opening January 6, 1932. It appears from this Commission's exhibit that your company was one of the bidders in that letting.

Will you tell me whether that is correct or not?

A. Yes, sir. We submitted two bids at that letting, one for shipment from St. Louis and one for shipment from LaSalle.

25571 Q. You say you submitted two bids in that letting, Mr. Fellows?

A. Yes, sir.

Q. What are Respondents' Exhibits 1004 and 1005, if you know?

The witness identified Resp. Exs. 1004 A and B and 1005 A and B as work sheets covering the submission of these bids of January 6, 1932; Resp. Ex. 1004 A and B as a work sheet that Alpha originally computed on the base prices indicated there; Resp. Ex. 1005 A and B as further computations using a different set of bases. With respect to all these other work sheets, they were made under his direct supervision and at his request. He can vouch for their accuracy and correctness.

The witness identified Resp. Ex. 1006 as a conversion table from cents per hundred weight to cents per

25572 barrel plus a 10% increase in freight rate which was effective at that time, and which is also con-

verted into cents per barrel and prices resulting from the use of certain bases. Alpha used Resp. Ex. 1006 in connection with this letting.

Examination on Voir Dire by Mr. Wooden.

Q. Did you explain what the red column of figures were?

A. How is that?

Q. Did you explain what the last column of figures in red were?

A. May I see it, Mr. Wooden, please?

Q. On Exhibit 1004-A and B (handing the said exhibit to the witness).

A. I can't explain right offhand what those are, but I could work it out in connection with other papers, I am quite certain. This particular 1004-A and B was our original compilation which was not used in the submis-
25573 sion of our bid, but it indicates an original working up of figures that we thought we might quote but subsequently did not use.

Q. But you don't know now what the red figures indicate?

A. Offhand, I do not.

Q. Referring to Respondents' Exhibit 1006, for identification, would you explain what the 85 and the 80 up at the top mean?

A. Yes, sir; used in the final submission of this bid.

Q. Did you already explain it?

A. No, sir; I have not explained it.

Q. Will you go on?

A. Under the column 85, 85 cents, appears certain figures. Those figures are the figures resulting from using 85 cents as a base with the freight rate using—giving effect to the 10 percent freight rate increase, and these are the resulting destination figures.

The other column is the same thing exactly using an 80-cent base.

Q. Which one did you use, either an 80 or 85-cents in making your bid?

A. Yes, sir.

Q. Which one of those?

A. Eighty, including discount.

Q. At what point was the 85 and 80-cent figure based on?

A. LaSalle and St. Louis.

25574 Q. Did you explain regarding Exhibit 1004-A and B what the red and blue figures mean, as distinguished from the black?

(Pause.)

Mr. Wooden: Let the record show the witness has to do some calculating with pencil and paper before he can answer the question.

Mr. Porter: Also let the record show that the question of Mr. Wooden as to whether if he made up these figures 7 years ago he could tell without checking to see what those figures are.

Mr. Wooden: I didn't ask him any such question.

A. Well, I don't recall what those figures were at the present time, Mr. Wooden, because we didn't use them in compiling the bid that we submitted, as far as I can recall now.

Mr. Wooden: Your Honor, we make the same objection to these exhibits as made to preceding ones of the same character, and, in addition, we object on the ground that the witness has testified that as to two of these compilations, I believe, they did not use them in submitting the bid.

25575 Trial Examiner Norwood: But they didn't include them in the bid at all, and they made out some other compilation, and what do you want to show by this computation?

Mr. Porter: To show the absence of collusion and how we worked this thing out, what caused our final bid.

Trial Examiner Norwood: To show that you took a couple of tries at it? Is that the idea?

Mr. Porter: Well, that is one figure.

Trial Examiner Norwood: Couldn't you have taken a couple of tries at it to try to determine a figure that your system would indicate that somebody else had bid?

Mr. Porter: Possibly.

Trial Examiner Norwood: The fact that you took a couple of tries, does that prove anything at all?

Mr. Porter: Possibly, but these figures don't show that.

Mr. Wooden: How is anybody going to be able to use these figures when the witness can't tell us what some of the figures mean?

Trial Examiner Norwood: Well, if he can't explain that, and he says it was made under his supervision, and he can

vouch for them, and yet he can't tell what they are; I don't see—

25576 Mr. Leisure: May I ask a few questions about the exhibit? The difficulty comes with asking cross-examination questions on voir dire. If I could finish with the exhibit—

Trial Examiner Norwood: I think that those questions are very proper. Go ahead.

Mr. Wooden: I think they went to the identification.

Mr. Porter: I think the witness indicated he is ready to answer the question now, if I am not mistaken.

The Witness: Well, this 10 percent increase has something to do with these. These original rates on here didn't include the 10 percent increase.

Trial Examiner Norwood: Yes.

The Witness: It is a question of working it out as to just where that increase applies, and how it affected the figures that show on this.

Mr. Paulson: I want to remind Your Honor that Counsel has promised to point out differences as they went along in these various exhibits. It seems to me they still just illustrate the fact that they did use the basing-point system. There is absolutely no difference from the first one they used this morning.

25577 *Direct Examination (Resumed) by Mr. Leisure.*

Q. Mr. Fellows, looking at that Exhibit 1005-A and B, under the heading there "Delivered in cloth," was that the price you finally quoted?

A. Is this the column you are referring to (indicating)?

By Mr. Leisure:

Q. Yes, under the heading "Delivered Prices in Cloth." Do you see it there?

A. Yes. No, that is not the price which we ultimately quoted.

Q. On which of these sheets, then, Mr. Fellows, does appear finally the price that you quoted to the Illinois Highway Department on this letting?

25578 A. Respondents' Exhibit 1006.

Q. Well, then, what are the figures that appear on the right-hand column of 1004, the penciled figures, if you know, those that appear in lead pencil?

A. I don't recall offhand what they are. I don't see how it ever can be explained.

Q. Let me see if I can refresh your recollection on that, Mr. Fellows:

Q. Will you, Mr. Fellows, look at Respondents' Exhibits 1007 and 1008, and see if you can refresh your recollection and tell us what these figures are?

25579 A. 1008-A and B is a list of all these points that we bid on, county seats of the various counties in the State of Illinois.

Trial Examiner Norwood: Yes.

The Witness: One column here in my handwriting showed the price that we bid to the State of Illinois at that letting; I put those prices down and asked someone to put down our market, our then market price, and to show under that how much lower we had bid the State of Illinois than our then market price. That is Respondents' Exhibit 1008-A.

By Mr. Leisure:

Q. Well, my purpose in handing you the exhibits at this time, Mr. Fellows, Respondents' Exhibits 1007 to 1008—I want to call your attention to the figures that Mr. Wooden was asking you about in Respondents' Exhibit 1004.

I am now asking you whether or not from refreshing your recollection from Respondents' Exhibits 1008 and 1007, you can tell us what the red-pencil figures are

25580 on the right-hand side?

A. Yes.

Q. Of Respondents' Exhibit 1004.

A. Yes, sir.

Q. Which appear on the right-hand column,—what are they, if you know?

A. Yes. The red figures show our freight prices at that time after giving effect to the 10 percent freight increase.

Q. Now, as to the freight increase, what are these circles around the freight increases?

A. This sheet does not show the 10 percent freight increase.

Trial Examiner Norwood: What do you mean by "this sheet"?

By Mr. Leisure:

Q. Respondents' Exhibit 1004 you are speaking about?

A. 1004-A and B.

Trial Examiner Norwood: Yes.

A. It does show, however, which point made the lowest combination of base plus freight, resulting in our delivered price, which we originally worked out on this sheet after giving effect to the freight-rate increase results in these prices on the right appearing in red.

(Indicating) You will find one point down here, Cook County, which is not in red, it is in black.

Q. That seems to be written in ink.

25581 A. I thought it was pencil; maybe I can't see clear enough. That's the same price that appears over in our then market price in this column (indicating).

Q. Yes.

A. That is due to the fact that there was no increase on the rate from Buffington into Chicago. Our market price after that rate increase was the same in Chicago as it was before.

Q. Now, you have a heading on this sheet, Respondents' Exhibits 1004-A and B, "SC,"—what does that mean?

A. That stands for Sugar Creek, at which point there was a mill of the Missouri Portland Cement Company. They have freight rates on there, and they had evidently bid on some previous letting, and we thought it was necessary to put their—

Trial Examiner Norwood: To put what?

The Witness: We thought it was necessary to put those rates on there to figure that computation, too,—when we originally started to figure this bid from March, 1932—that is not March, that is January

By Mr. Leisure:

Q. Now, you have already told us that your work sheet, Respondents' Exhibit 1005, superseded Respondents' Exhibit 1004; is that right?

A. Yes, sir.

Q. What were the circumstances under which this was done?

A. One column here appears the prices—the mid-
25582 dle column here appears the prices, our commercial prices, giving effect to the 10 percent freight rate increase.

On the lefthand column, next lefthand column to that, appear our prices that we were figuring on bidding, one column 85, and the other column 80, giving effect to the increased freight rate:

The blue—those figures in blue—indicate a shipment from St. Louis, and the red for shipment from La Salle, and indicates that the resulting price was made up on the La Salle rate, plus the La Salle base, or the blue on the St. Louis, or Alpha, Mo., base, plus the Alpha, Mo., freight.

By Mr. Leisure:

These three sets of prices in the three righthand columns—

A. Yes, sir.

Q. —will you explain the purpose of that.

A. We were considering at that time whether to bid our then going commercial price, or whether to bid on the basis of an 85-cent base at La Salle, and Alpha, Mo., or
25583 whether to bid on the base of 80 cents La Salle or Alpha, Mo., and these figures, the middle column, represent our commercial figures. One column is based on 85 cents, and the other on 80 cents, and the lowest combination of 85 and 80, plus the freight rate from La Salle or St. Louis to destination, was the one that we were using to govern.

Q. Now, will you look at Respondents' Exhibit 1006, and tell us what, if any, connection it had with this exhibit?

A. This is simply a conversion table showing the freight rates in effect before the 10 percent increase, those rates being converted from hundred pounds into barrels, then showing the 10 percent freight increase per hundredweight, and converted and giving effect to the increase, and converted into cents per barrel. Then, under one column is 85, and another column 80, and the price worked out for that base plus that particular freight, and it is simply put in this way to make it easier to compile it and have it before us.

Q. Now—

A. In other words, for instance, here is a 9-cent rate, which is 34 cents per barrel. A 10 percent increase would make that 9.9 cents, and that would make 38 cents per barrel. On a basis of 85 cents that would make a delivered

price of 1.63, and on the base of 80 cents would make a delivered price of 1.58.

Q. Now, will you look at Respondents' Exhibit 1008, for identification, and tell us what, if any, connection it
25584 had with this same exhibit?

A. Didn't I identify that before, Mr. Leisure?

Q. I don't know whether you identified it or not. I think you told us what it was, but I don't think you told us whether it had any connection with this exhibit.

A. Well, this sheet didn't have anything to do with our making up of this bid, but after we had determined what we were going to bid, and made up this bid, all we put down was what we had bid, what our market price was, and how much lower we had bid the State in our then market price, in an effort to help us to determine what to do, because we needed the business; the competitive situation was decidedly acute, and we had gotten to the point where we just had to have some business to ship from our St. Louis and La Salle mill. Then it was a question of whether or not we would send out quotations on the basis of the price that we had quoted the State.

Q. Well, is the figure appearing in the first column under the heading "Alpha"—do you see that?

A. Yes.

Q. Can you tell us whether or not they were the prices you actually submitted on this Illinois bid of January, 1932?

A. Those were the prices—I want to check to see whether those were the prices we submitted on that bid. (Witness studies exhibit.)

A. Yes, sir.

25585 Q. Now, you have just been referring, Mr. Fellows, to the proposal that you now have in your hand,—Respondents' Exhibit 1007, is it not?

A. Yes, sir.

What is that question, please?

Q. You have just been referring to the proposal, and the exhibit which you have in your hand is the proposal which is No. 1007, is it not?

A. Yes, sir.

Q. Will you look on page 2?

A. Yes.

Q. There are certain pencil markings and writings; can you tell me what those stand for?

A. We were taking exception in this proposal to some of the provisions provided in it. This was our office copy of the proposal, and we wrote in here with pencil the changes that we were suggesting.

Q. I notice on page 4 of the same exhibit there is a whole sentence stricken out. Do you know whether or not that sentence was stricken out in your bid as submitted on this letting?

A. I am not sure whether it was or not. I could tell by seeing the proposal, of course. We submitted two proposals at this letting.

Q. Yes.

25586 A. One for shipment from St. Louis and one from La Salle. This happens to be the LaSalle.

Q. On either of those did you submit—was there any discount for payment within 15 days?

A. There was the usual 10 cents a barrel cash discount.

Q. You say you submitted two proposals, Mr. Fellows. Have you produced any from St. Louis? From the St. Louis mill?

A. No, sir; I have not.

Q. Do you know whether or not your other bid was of the same form as this bid?

A. Yes, sir.

Q. That is the one from St. Louis?

A. Yes, sir. For instance, this one from—that

25587 we put in for shipment from La Salle only covered those points that we wanted to ship from La Salle that were based on our 80-cent base at La Salle. And the one from St. Louis we submitted bids at points that are not included in here, and it gives St. Louis.

Q. But were the prices quoted on that bid the same as those shown on Exhibit 1008?

A. Yes, sir.

(RESP. EXS. 1004-A, 1004-B, 1005-A, 1005-B, 1006, 1007-A to 1007-S, and 1008-A, 1008-B were offered and received in evidence.)

By Mr. Leisure:

25588 Q. You told us about these lower prices that you quoted, Mr. Fellows. I would like to ask you, in that connection, when you did quote lower prices on this letting whether you first took the matter up with Mr. Coogan.

A. Yes, sir. I had to take that up with Mr. Coogan or we would put in lower prices—the competition, as I said before, was getting very acute, and before we decided to quote the prices that we did, we had a conference between Mr. Coogan and I over the telephone.

The witness identified Resp. Ex. 1009 as a report from Mr. Smith covering the Illinois Highway letter.

25589 Mr. Smith is District Sales Manager of the Chicago office and the report indicates the prices quoted and the amount per barrel that Alpha was low at the destination points shown. On each of these, the figures containing only two digits referred to the cents. There should be a dollar in front of that because all those thing ran a dollar and so and so, and did not go above two dollars destination prices. The heading "Alpha Low" in the right hand column on the extreme right hand side means that Alpha was two cents low at Adams County, two cents low in Alexandria County, two cents low in Bond County, ten cents low in Boone County, and so forth, all the way down.

Examination by Trial Examiner Norwood.

The witness testified that "ten cents low" means lower than anybody else quoted at that letting.

Direct Examination by Mr. Leisure (Continued).

The witness identified Resp. Ex. 1010 as a confirmation of a telegram dated January 21, 1932 sent to Alpha's Chicago office by Mr. Cleaveland, the Director of Highways, State of Illinois.

25590 (RESP. EX. 1009-A to 1009-D, inclusive, and 1010 were offered and received in evidence.)

By Mr. Leisure:

25591 Q. Mr. Fellows, I desire to direct your attention to Commission's Exhibit 1886, which purports to be a tabulation of the bids to the Illinois Highway Department, opened on February 3, 1932. I have been unable to find from this exhibit that the Alpha Company made any bid on this letting. Can you tell me whether or not your company submitted a bid?

A. We did not.

Q. Can you tell us the circumstances as to why you did not submit any bid?

A. Well, we had bid on this letting of January 6, 1932, and had been awarded the amount we had bid on, 1,300,000 barrels between the two plants. We were perhaps foolish enough to believe that an award meant something, so we didn't bid on this letting of February 5, believing that we had received an award of 1,300,000 barrels and would be privileged to ship the amount that had been awarded us in view of the fact that we were low bidder at that letting.

Q. So you didn't bid on this one?

A. So we didn't bid on this.

25592 The witness identified Resp. Ex. 1011-A to D as a tabulation of bids in his handwriting covering the letting of February 3rd. Most of the prices shown are in only two digits and a "1" should be added in front, e.g., $1.64, 1.54, and so forth, instead of 64 and 54. Those typewritten figures on the top at each of the destinations are the prices that Alpha had bid on the letting of January 6, 1932, and on which it had received an award of 1,300,000 barrels. These are the prices that were bid by the bidders at this letting, Ash Grove, Dewey, Kosmos, Lehigh, Lone Star, Louisville, Marquette, Medusa, Missouri Portland and Universal.

Q. Now, you say you didn't bid on this letting. What was your purpose in attending it then?

A. We wanted to see what our competitors had bid. We wanted to see and get that information as soon as we could and find out whether or not they were bidding lower than we were, and as to what the competitive condi-

25593 tion was at that letting as a result of the prices that were bid.

Q. When you say "that letting," Mr. Fellows, you are referring to Commission's Exhibit 1886?

A. Yes, sir.

The witness identified Resp. Ex. 1012 as a copy of a letter he wrote to Mr. Coogan under date of February 6th, referring to this letting, Com. Ex. 1886, of February 3rd. In that letter sent to Mr. Coogan, witness enclosed a tabulation which is a copy of Resp. Ex. 1011.

25595 (RESP. EX. 1011-A to 1011-D inclusive and 1012 were offered and received in evidence.)

By Mr. Leisure:

25596 Q. I said, what happened after this letting of February 3d? Did you have any negotiations with the State of Illinois, Mr. Fellows, with respect to this January, 1932 bid?

A. Well, they took the matter up with us in regard to our meeting the subsequently lower quoted prices, the prices, the lower quoted prices, that had been quoted on the letting of February 3, at which letting we did not bid, having previously received an award.

Q. Now, you say they took them up with you, sir; will you look at Respondents' Exhibits 1013 through 1015.

Mr. Leisure: And 1016 and 1017.

Q. And tell us what, if anything, those exhibits have to do with that negotiation?

First, suppose you just identify the exhibits in order. What is Respondents' Exhibit 1013-A, B, if you know?

A. Respondents' Exhibit 1013-A and B is a list made up under my instructions by Mr. Smith, district sales manager, Chicago office, indicating the number of barrels, and the amounts, that we would have to meet
25597 the lower quoted prices on the letting of February 3.

Q. And Respondents' Exhibit 1014-A, B?

A. 1014-A and B is a copy of a letter that I wrote to Mr. Cleaveland, or for the attention of Mr. Cleaveland, Director of the State of Illinois Public Works and Buildings.

Q. And Respondents' Exhibit 1015-A and B?

A. Respondents' Exhibit 1015 is another letter that I wrote dated February 8 to Mr. Cleaveland at the Illinois Department of Public Works and Buildings.

Q. And Respondents' Exhibit 1016-A and B?

A. 1016 is a copy of a letter dated February 11 that I wrote to Mr. Coogan.

Q. With respect to this same matter?

A. Yes, sir.

Q. And Respondents' Exhibit 1017-A and B, for identification?

A. 1017 is a supplementary agreement that we had to enter into with the State Highway Department meeting some of those subsequently lower quoted prices.

Q. Now, what do these lettings appearing on these two

sheets indicate,—16 cents, 10 cents, and so forth,—what do they indicate?

A. What exhibit is that?

Q. I have it in my hand, Respondents' Exhibit 1013 (indicating).

(Witness examines document) 1013-A indicates
25598 that we would have to reduce our price 16 cents per barrel on 17,000 barrels at Boone County, 49,000 barrels at Bureau, 8,000 in Camol County, 114,000 in Champaigne County, and so on and so forth, in order to meet the lower prices quoted by Marquette, on the letting of February 3, lower than the prices that we had quoted, and lower than the prices on which we had received an award for shipment from our St. Louis plant.

Q. You say that you would have to; did anybody ask you to meet them?

A. The State highway did.

Q. They asked you to?

A. Yes.

Q. What about the other figures?

Trial Examiner Norwood: He is asking you to lower the price that they had already contracted to pay?

The Witness: Yes, and which we had to do. One of these exhibits is a supplementary agreement saying we had agreed to do that.

By Mr. Leisure:

Q. When was the agreement executed, if you know? Can you refresh your recollection from Respondents' Exhibit 1017-A and B, and tell me?

A. Well, this states here that this supplementary agreement concluded on February 3d (indicating).

25599 A. But it was not concluded until some time after that, because it was a matter of correspondence and conversation with Mr. Coogan over the telephone. I think some of these letters indicate negotiations were going on.

Q. Was there any similar agreement entered into with respect to the LaSalle mill?

A. Yes, sir.

Q. Similar to this Respondents' Exhibit 1017-A and B (indicating)?

A. Yes, this covers shipment from the St. Louis plant,

but there was a similar supplementary agreement made also covering the shipments in the LaSalle plant. We have not been able to find that.

25610 Q. Mr. Fellows, will you address your attention for a moment to Exhibit 1011? You have told us that these computations are in your handwriting, and that you attended the letting, the opening, and wrote them down yourself.

A. Yes.

Q. Is that right?

A. Yes, sir.

Q. Now, on the abstract of the bid put in by the

25611 Commission, there is given the county, the county seat, and the names of the various companies that bid on this letting, and you have carried the names of the company who bid on the letting; is that correct?

A. Yes, sir.

Q. Are there any figures on here which you computed yourself which do not appear on Commission's Exhibit 1886? When I say "on here," I am referring to Exhibit 1011.

A. Well, the figures, the typewriten figures here are the prices we had bid the letting previously.

Q. And they do not appear on that tabulation?

A. They do not appear on that tabulation.

Q. Since you did not bid?

A. Yes.

Q. Will you explain to His Honor what those typewritten figures are, and how you got them? These (indicating).

A. Those are the prices that we bid on the letting of January 6, and were the result of—

Trial Examiner Norwood: Not on this letting here (indicating)?

The Witness: Not on this letting at all because we didn't bid on this letting (indicating).

Trial Examiner Norwood: Yes.

The Witness: We had bid these prices on the letting of January 6th and were awarded 1,300,000 barrels

25612 on these prices.

By Mr. Leisure:

Q. Yes. Now, as to those prices, will you look at Com-

mission's exhibit—you say you had previously bid them. Will you look at Commission's Exhibit 1884 and tell us whether every one of them appears on that Commission's exhibit? I don't mean read every one of them. Just read enough to satisfy you.

A. "Adams County, $1.66; Alexandria County, $1.68," and so forth.

Q. They do or do not appear on Commission's Exhibit 1884, Mr. Fellows?

A. They do appear on 1884; yes, sir.

Q. Do these figures here, Mr. Fellows—I am now referring to the columns 3, 4, 5, 6, 7, 8, and 9 in Respondents' Exhibit 1011? Do they appear on Commission's Exhibit 1886?

A. In Commission's Exhibit 1886, under the bids submitted by the Dewey Portland Cement Company, they show the price at the county seat of Adams County of $1.59. In my compilation here—in my abstract of
25613 these bids, it shows Dewey bid $1.59 at Adams County.

Q. Where did you get these figures?

A. The State Highway Department accepted—took all of these bids, and opened these bids, and I sat down—

Q. You attended?

A. I attended the letting, and sat down there, and, as these bids were read off, took down these prices.

Q. And every one of these bids which appear on Respondents' Exhibit 1011, appear in Commission's Exhibit 1886; is that or is that not correct?

A. I don't know; I presume they do. Those are the companies that bid at that letting, and that's what they did.

Q. If Commission's Exhibit 1886 is correct, would you say that they appear on it?

A. Yes, sir.

25614 (RESP. EXS. 1013-A, 1013-B, 1014-A, 1014-B, 1015-A, 1015-B, 1016-A, 1016-B, 1017-A, and 1017-B, were offered and received in evidence.)

25615 The witness identified Resp. Ex. 1018 as a tabulation made up covering the shipments that were to be made from Alpha's LaSalle Mill based on the award that had been made to it by the State Highway Department

of Illinois as a result of its bid of January 6th,
25616 showing the prices which it had to meet in order to make shipments on that award, together with the freight rate per hundred weight, the freight rate
25617 per barrel, and the resulting mill nets; Resp. Ex. 1020 as a copy of a letter that he wrote to Mr. Cleaveland of the State Highway Department, outlining the position that Alpha was taking in regard to shipments on this contract that had been awarded to it; Resp. Ex. 1019 as another list made up under his supervision and instructions, indicating the counties at which Alpha had made the lowest quoted price, at the subsequent letting of February 3.

25619 (RESP. EXS. 1018, 1019-A, 1019-B, 1020-A, 1020-B, and 1020-C were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Fellows, after you had submitted this bid to the State of Illinois in January, 1932, on the basis of the reduced figures that you sent out from the St. Louis mill, can you tell us whether or not you made any change in your commercial prices in that territory affected by those bases?

Did you hear the first part of my question, sir?

A. Yes, I think I did, sir.

My recollection is that there was a change in several of the bases at that time, and then we sent out, after we had found prices in the field, quotations meeting those lower quoted prices.

Q. What was your base at LaSalle, and Alpha, before you put that bid in, if you know, Mr. Fellows?

A. My recollection is that it was $1.10. I would have to look at the exhibit; I wouldn't know without looking at the exhibit.

Q. What was the base you used in this bid?

A. Eighty cents—eighty cents including the discount, that would be 70 cents stripped. On one of the exhibits just received there it showed the discount, or showed the mill net, was 64 cents; that included the discount.